Dalga (Band) Alan Mino

(George W. Weaver & Sons, Inc. vs. Defendants, 1863 Equity Docket the record of which is consolidated with above stated case)

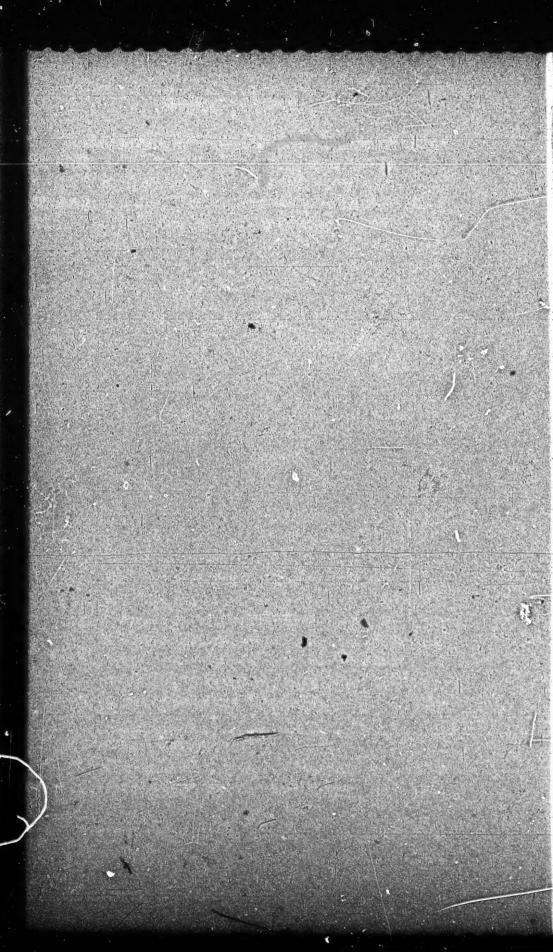
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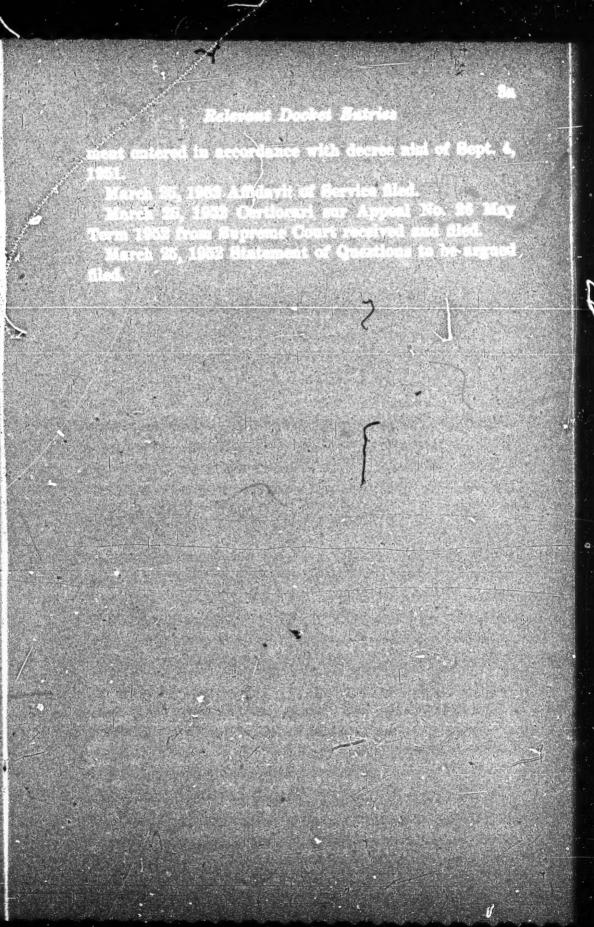


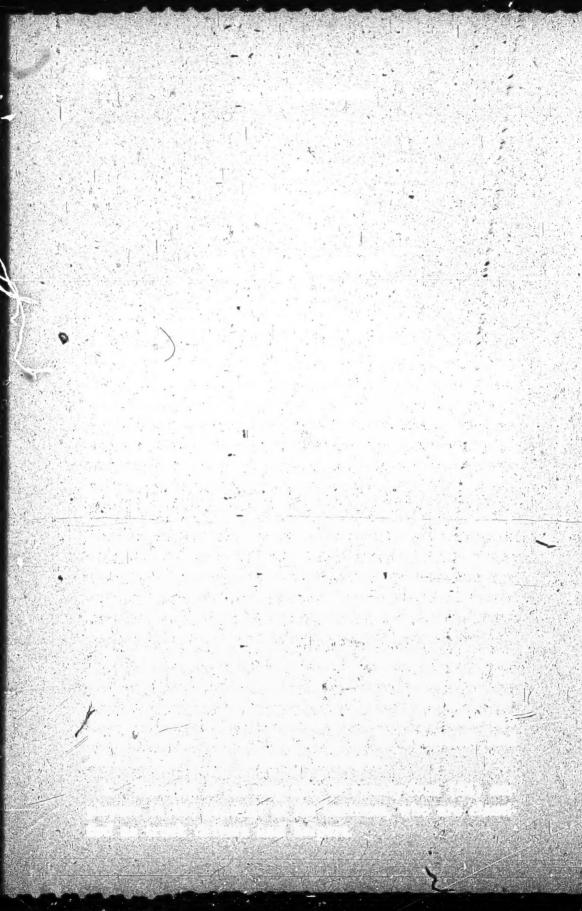


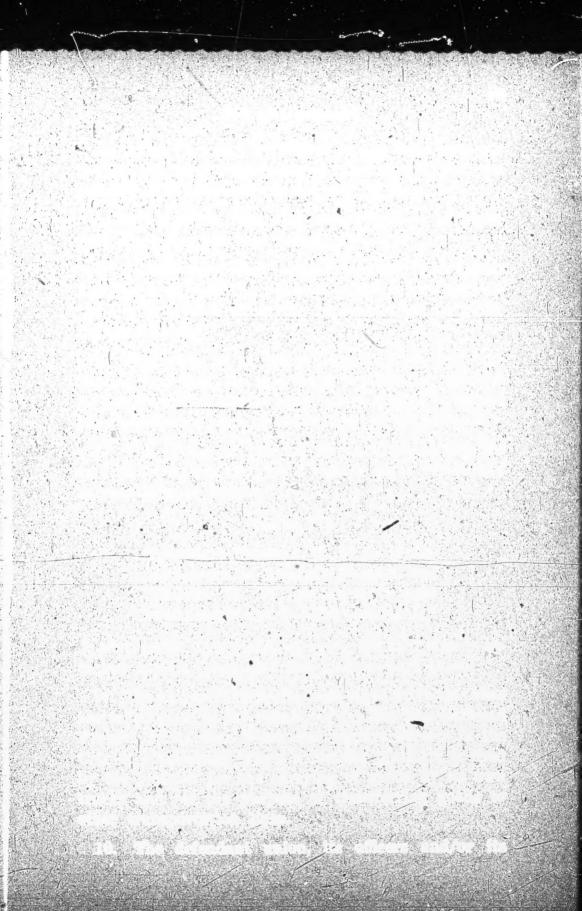
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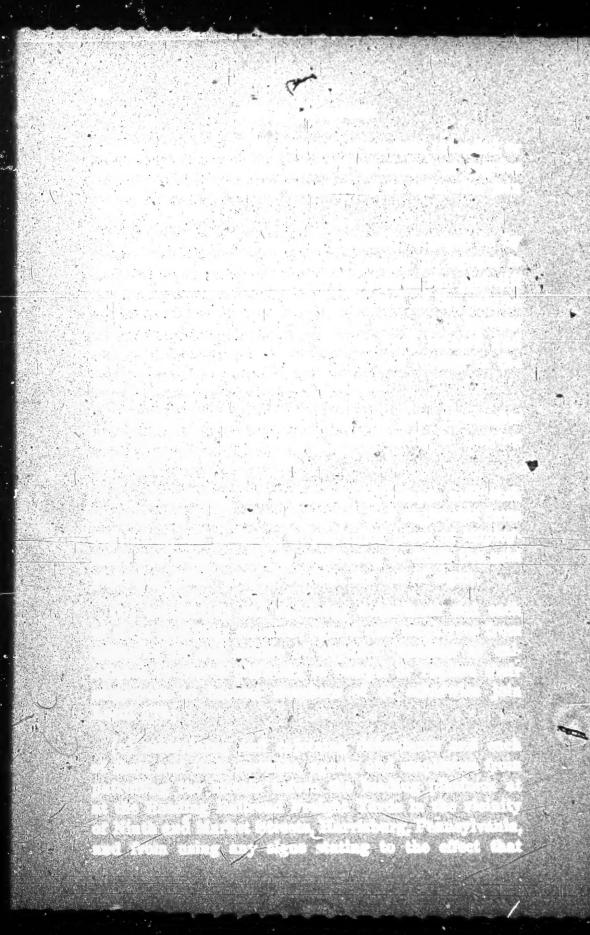
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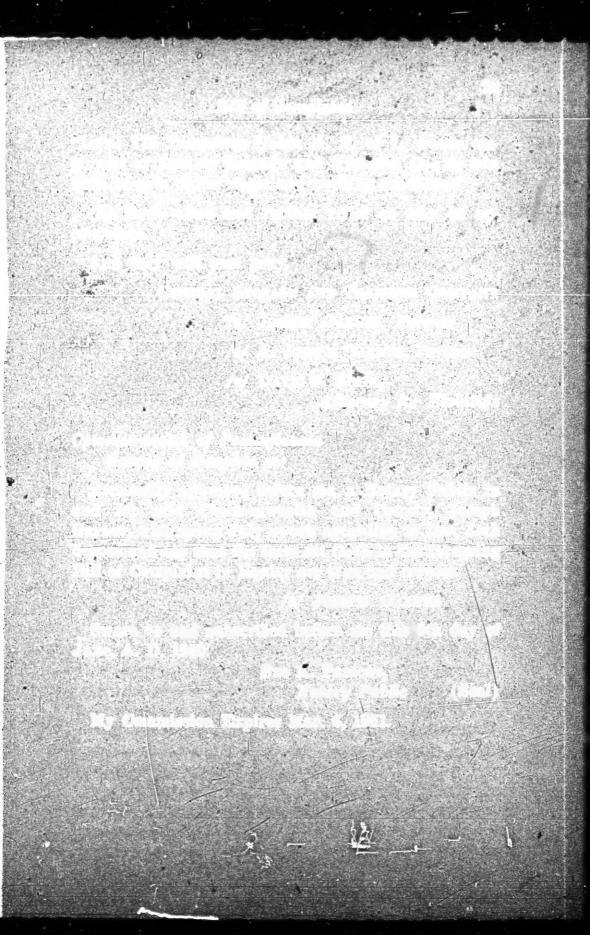
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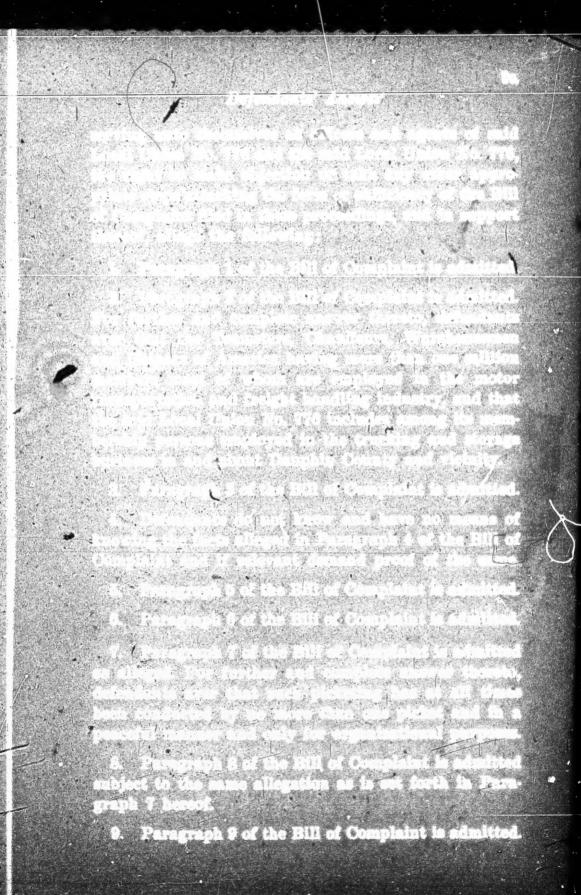








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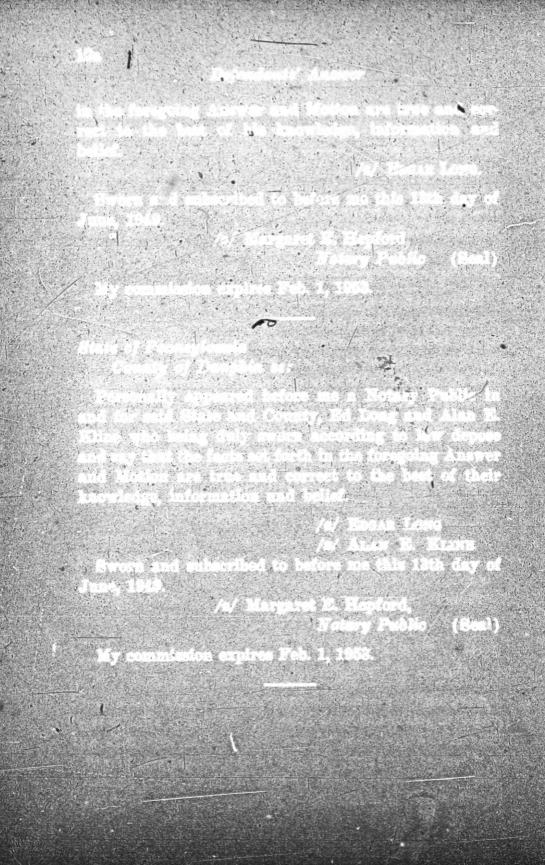
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12. For further answer to the Bill of Complaint and in support of Defendants' Motion to Discharge the Bule

MARKE DUNON NO. 770

A. Breas Love.

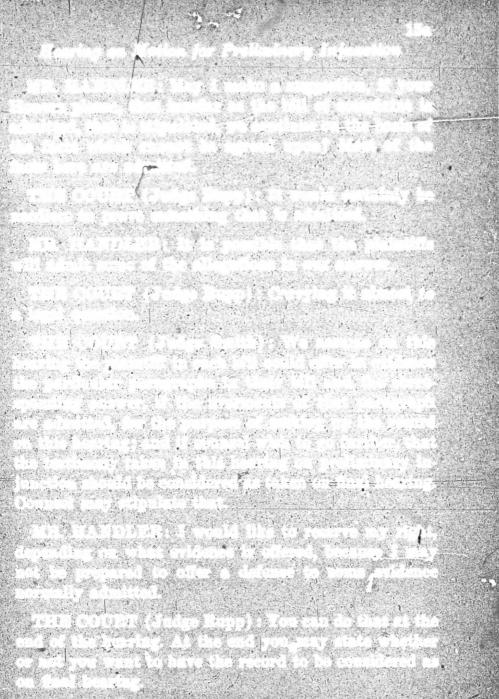
feurs and Helpers Union (AFL), and that he is authorized to make this affidavit, and that the facts set forth



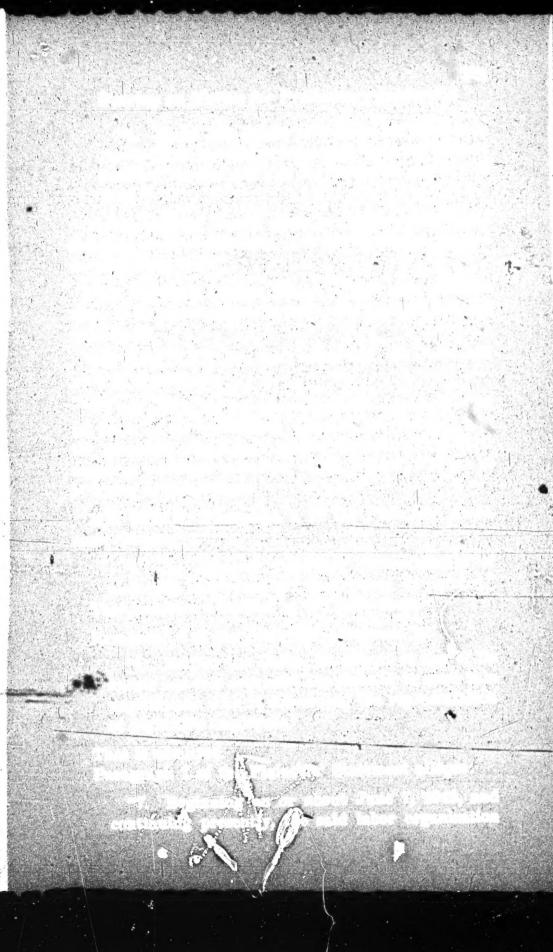
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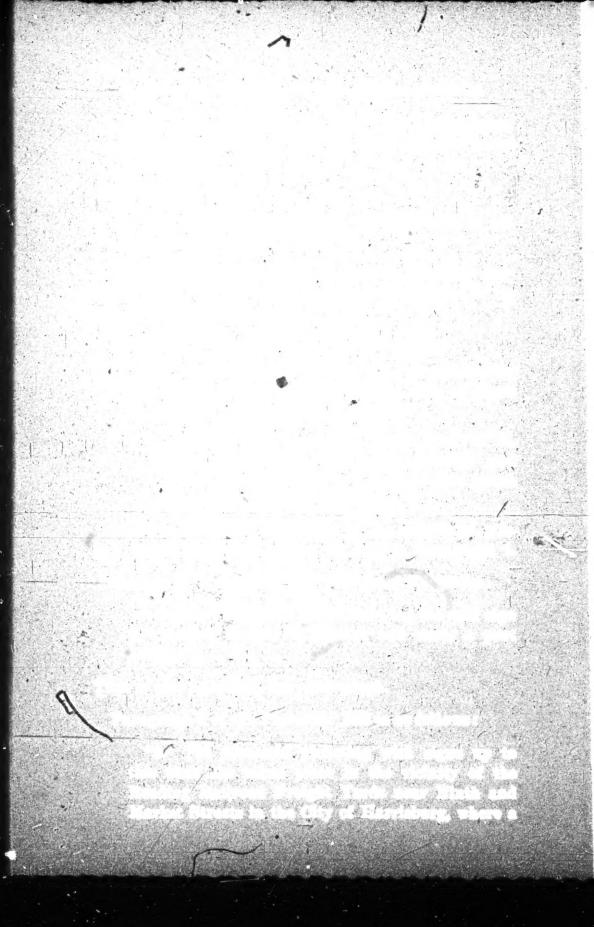
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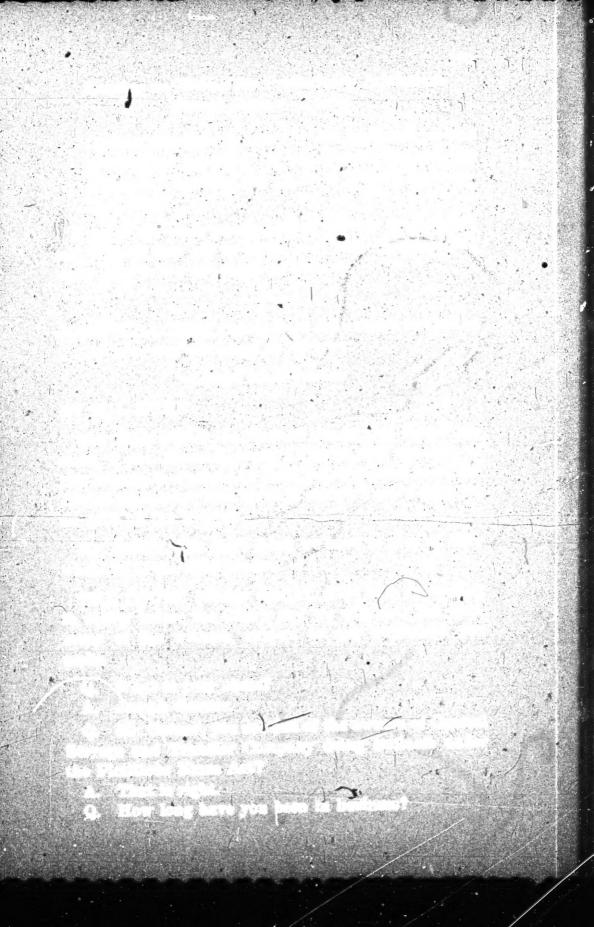
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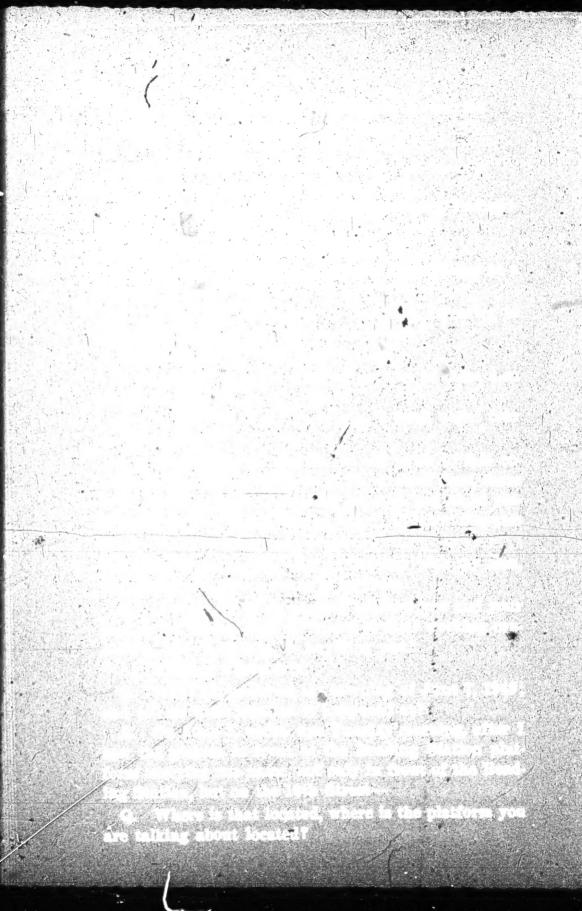












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Q. In connection with the freschi this conces in

discribition for the talking about been

The territory than Samuel School bear

Han the file (July Balt): You might develop

Lice Troping Want?

THE COURT (Judge Smith): You might develop why it was lost.

MR. KOHN: That is what I am going into now.

•

is the second consisting and the second second

the meaning seed one through your plattons and was accoming seed one trained in the
the discretion the presentation from
the Renders Transportation from
A. We down as morning, Jone Sch, they delivered a
State track job a much track about two-ton load, and
also a trailer load in the morning of June Sth, and that

merchandise was turned over to us and we made imme-

Commence of the second

- About 11:20 I called Mr. Kline again.
- Why did you call him the second time?

to the foregotal fore that has of profines.

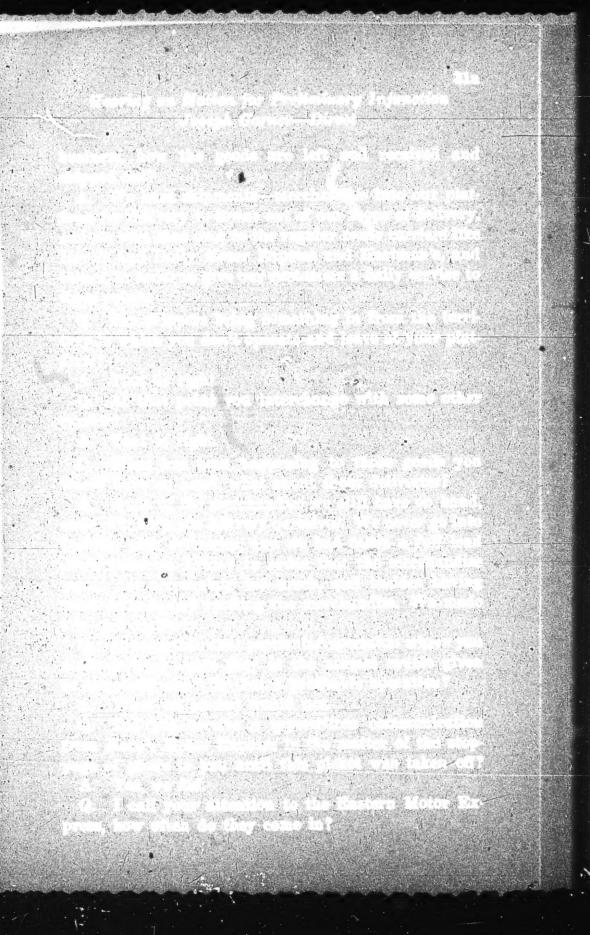
that something will be done about to

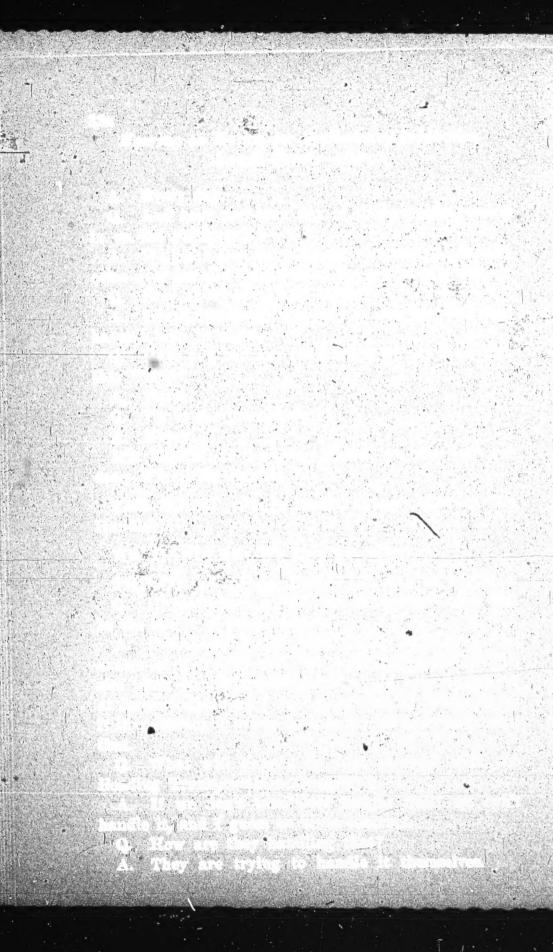
Q. These other truckers that come in, such as Hall's and Hartman's and Reading Transportation Company,

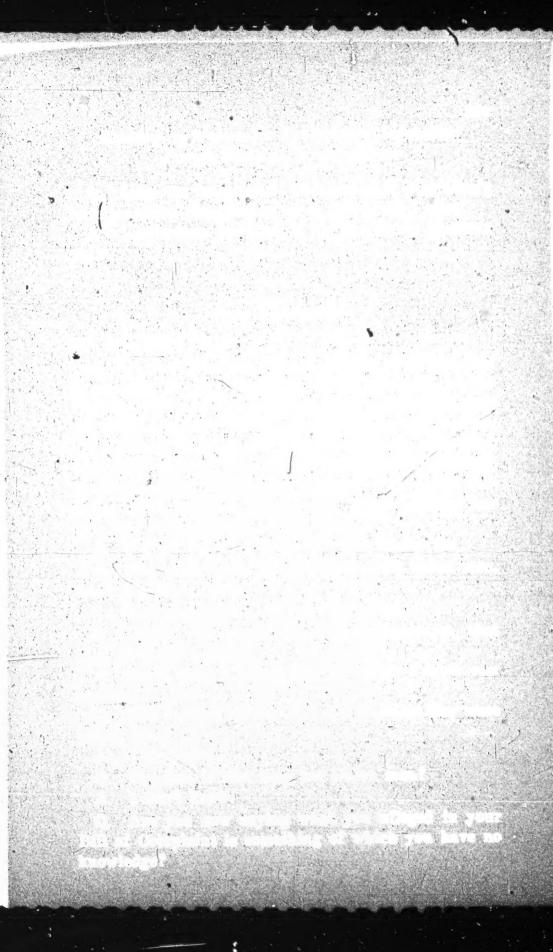
Q. Since pickets have been on, have you received any shipments from the Shirk's Motor Express?

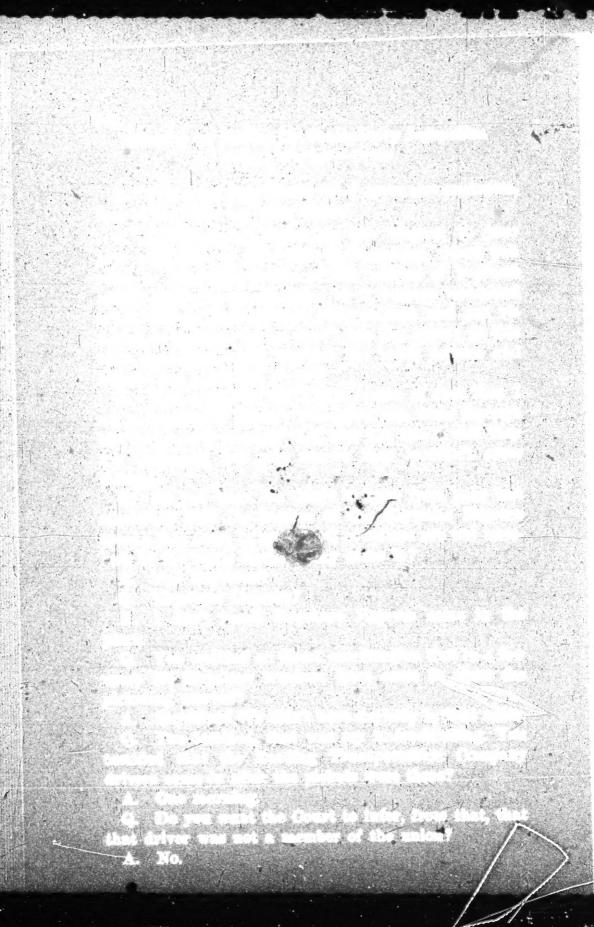
A. Yes, we receive shipments by one driver.

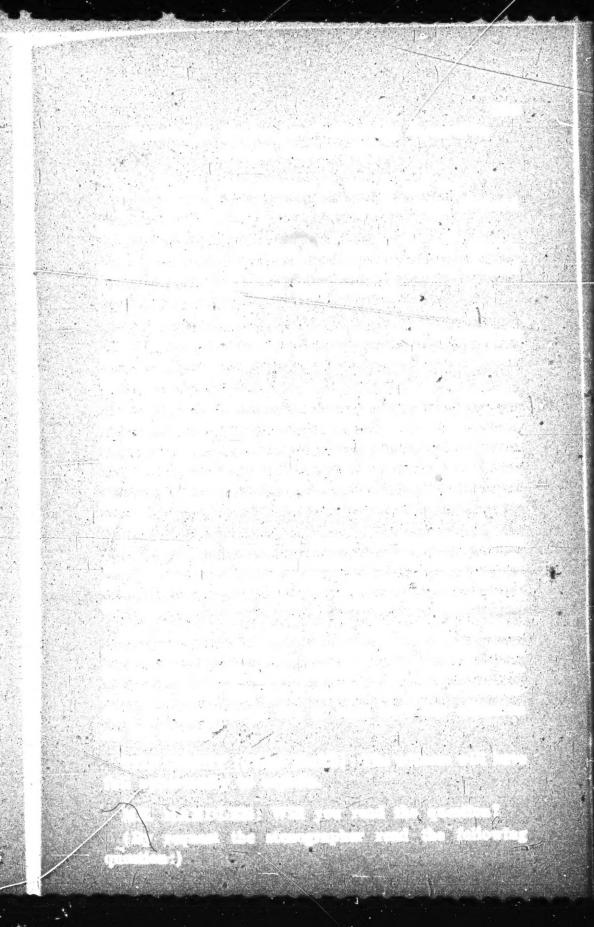
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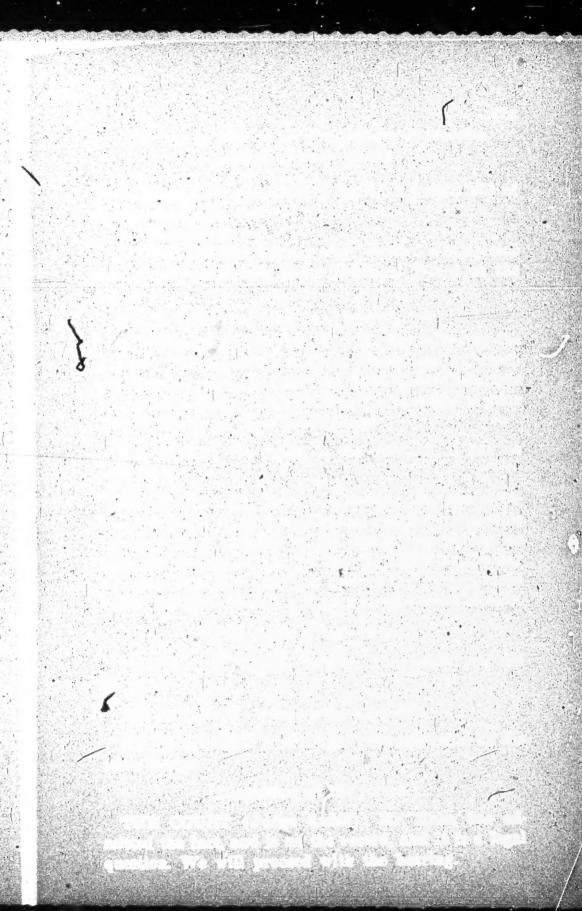


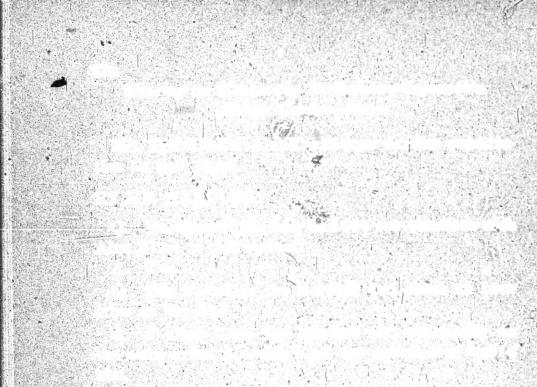


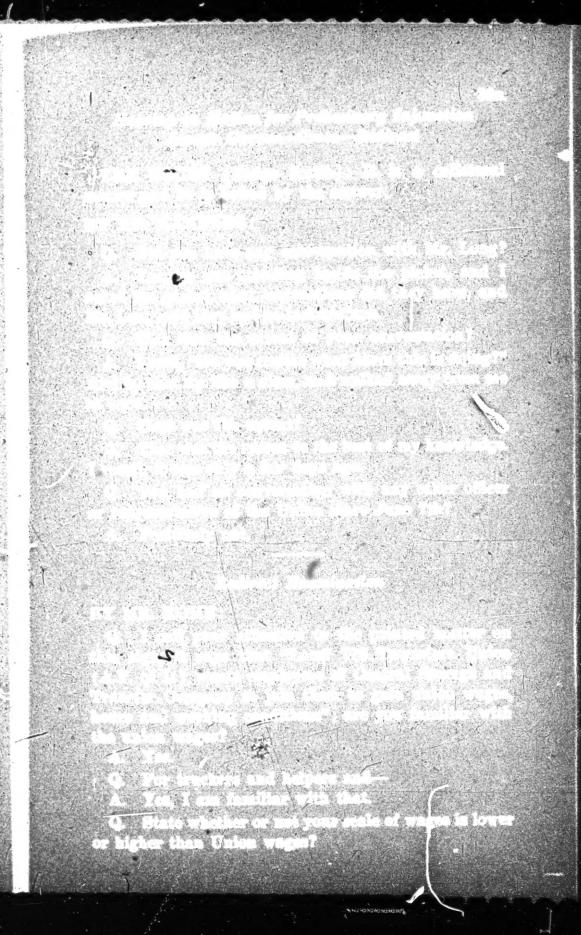












you monthly with all the union working of : (1:1:)(()) (E-1):10 - (E-1)

- Premium pay provisions?
- That I am not familiar with.

Seminar of the semina

into collaboral materia.

THE COURT (Judge Smith): Yes, he has enough on his cross-examination

C. In Markey can be seen we

2 Your name is it is it however!

An Teaching

What is your president his thouse.

G. East long lawe you been in they respect.

A. Manne III venie maybe

in a bestron concern

THE HANDING NOVEL HE CON- THE ME IN

A. I testified from my driver reporting to me.

MR HANDLER: I object to hearmy testimony.

THE WITNESS: O.K.

THE COURT (Judge Rupp): We admit it is hearsay, but the witness can tell us what he knows.

a 176 - on the present there is a store of the

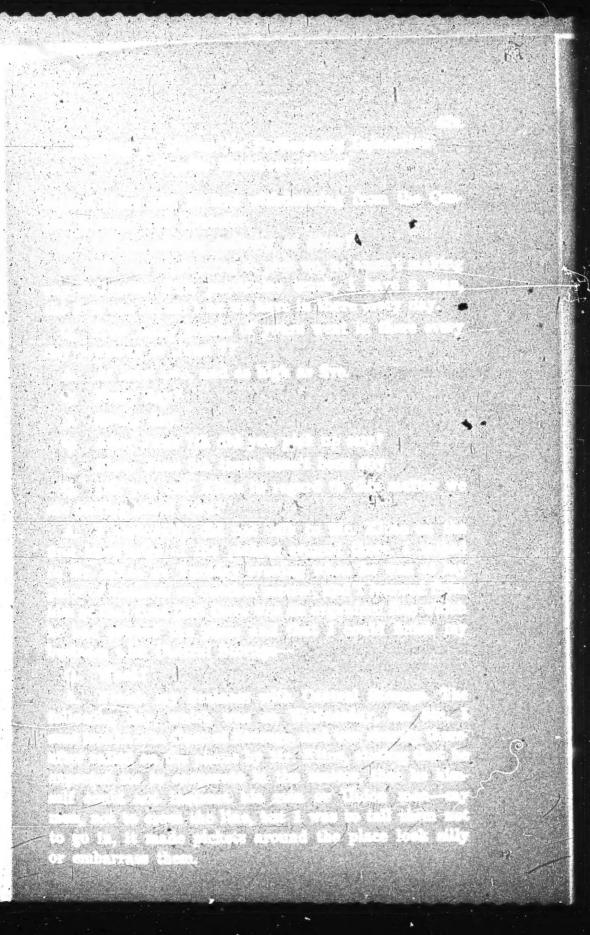
The some disper had the trouble, did you call

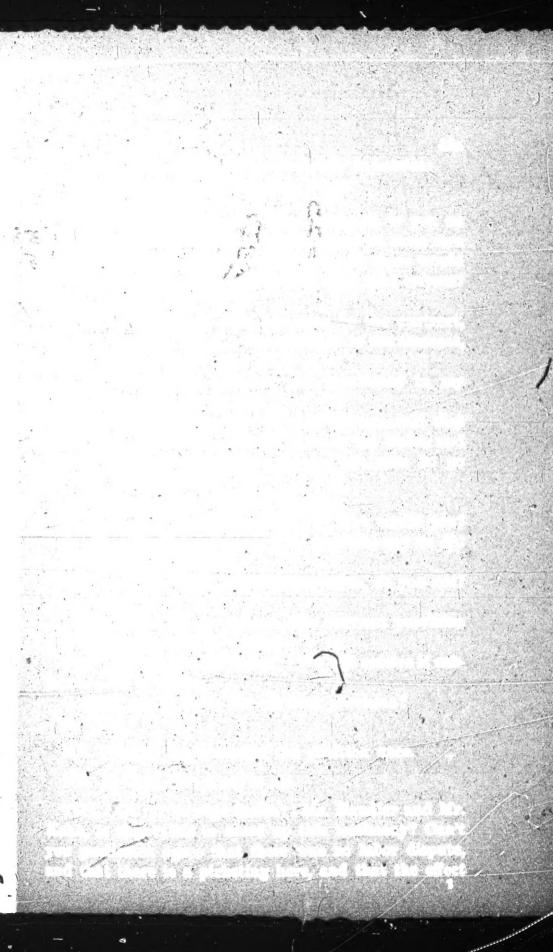
embarrass the pickets." I told the drivers: "It is up to you fellows"; and we haven't gone through.

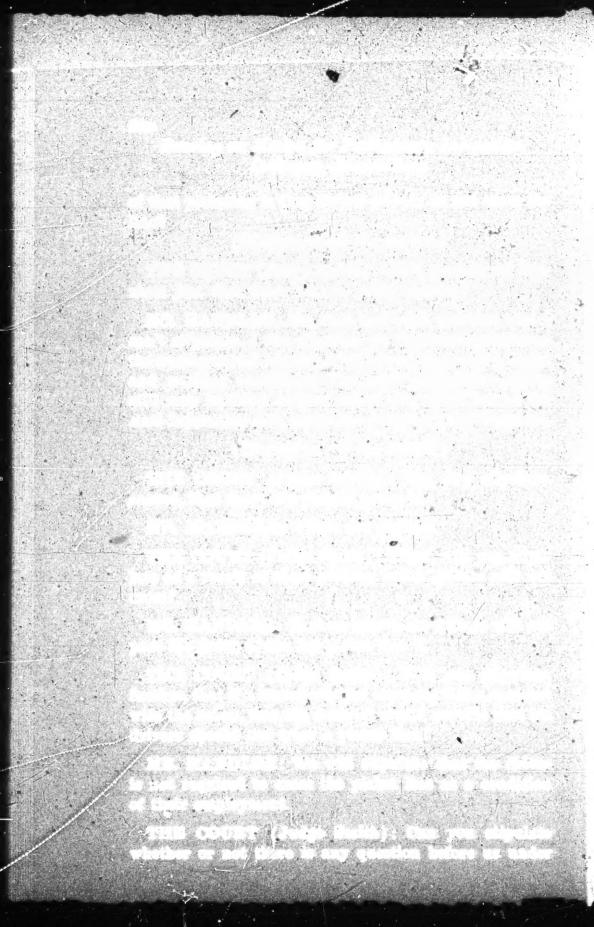
On Star T. MARKANO, having been duly sworn according to law, was examined as follows:

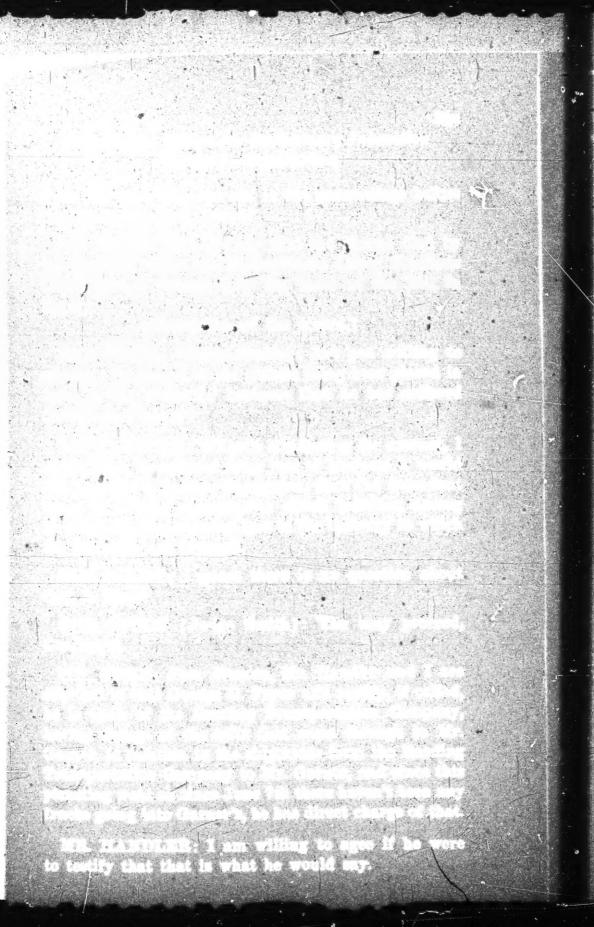
MR. HANDLER: No questions.

and advis









history Live States and States and States Mary Com

region of the second second second

Q For whom do you work?

ne spine and you to day out? A. Phat in right.

ME KOHN Cross commine.

MR. HANDLER: No questions.

The second secon

A to This wa

Q. Too didn't make any effort to accertain that?

 $\Lambda \cup \Lambda(i)$

MR. KOHN: Cross-examine.

MR. HANDLER: No questions.

anten arronali, kestal Marijaran amanber

evan Koene

Q. Your name is Burt Snyder? A. That is right.

Q. Where do you live?

0 The second secon District the limited of the limited

in the transfer of the Till ...

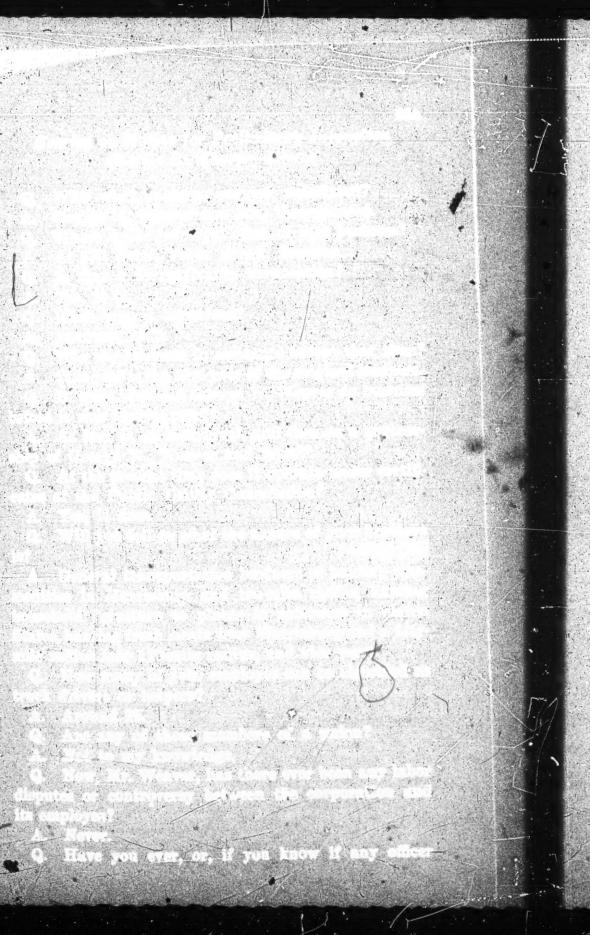
The december, Teamster, Chanteur and Relpers Local Union No. 775 (AFI), with other at No. 101 Pine Street, Harrisburg, Danphi

MR. LIPSITT: No. 6 of the Bill reads as follows:

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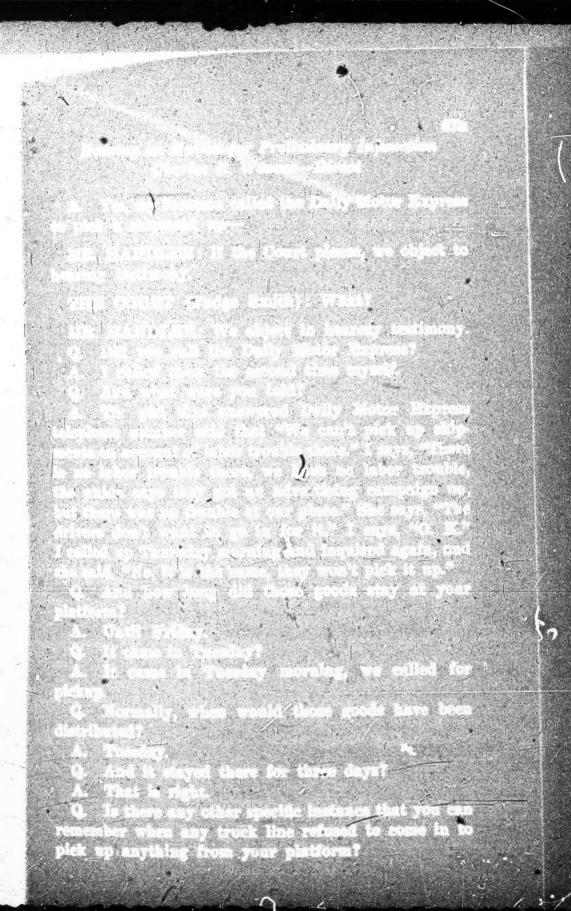


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The Court of Court of Washington and Sons to the Court of Court of

Sometime of the second



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the second of year bushes in interestable

Series Resembles

GT U.S. ELANDLING

Q. Your interchange is with lines that originat outside of the State, is it not?

That Course (Judge Bopp) : What is the purpose?

MR. HANDLER: The purpose is, the witness has testified that the freight loss is approximately, gross

HE THERE We are point to ob-THE COURT (Indee Smith): We will esseem

(Discussion of the record.)

RE HANDLES I will waive that que these:

per will up to seed.

No representative of the union moke to to microfing, no seed to the union make to the contract of the co

Ton haven't spoken to a union representative

A. I don't know the union representatives.
Q. You don't know the union representatives?

Ton haven't spoken to a union representative 1948, is that a fact?

A. No, I haven't spoken to any, I don't know them, I wouldn't know them to speak to.

NR. HANDLER: That is all.

MR. LIPSITT: It won't be necessary to call this

M.S. Elli E. D.C.E. He spoke to Mr. Cockiey, a delve in Transport

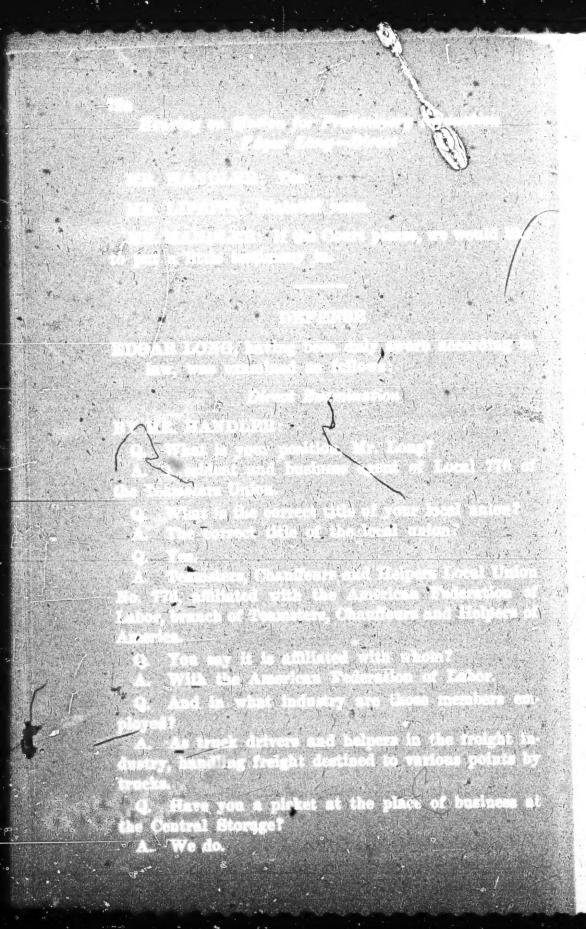
in india. The brine

MR. LAPE BUT: You had Moreon collect the Dely Motor Express and made to the oblic the can be saled but if the Deliy Motor Express favour vocal pick up from this terminal, and was informed that they would not

VIR TARRONAL AN EIGHT ...

MR. Large receive Company will best by that he was called by the foremen for George W. Weaver and Sur to make a pickup at the Pennaylwania Ballenai terminal platform and that he refused to send any of his drivers because of the pickets which were authored at the Pennaylwania Ballenai terminal; is that all right?

^{*}Name omitted from original notes of testimony.



al de la company Section of the sectio

teer Charles and Zalper Union

A. The piece that we have the

Q. Isn't that what those posters carry?

A. Yes.

A Victoria de la Companya del Companya de la Companya del Companya de la Companya

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 $\sum_{i=1}^{n} \frac{1}{i} \left(\sum_{i=1}^{n} \frac{1}{i} \sum$

Q. In Hartman contract?

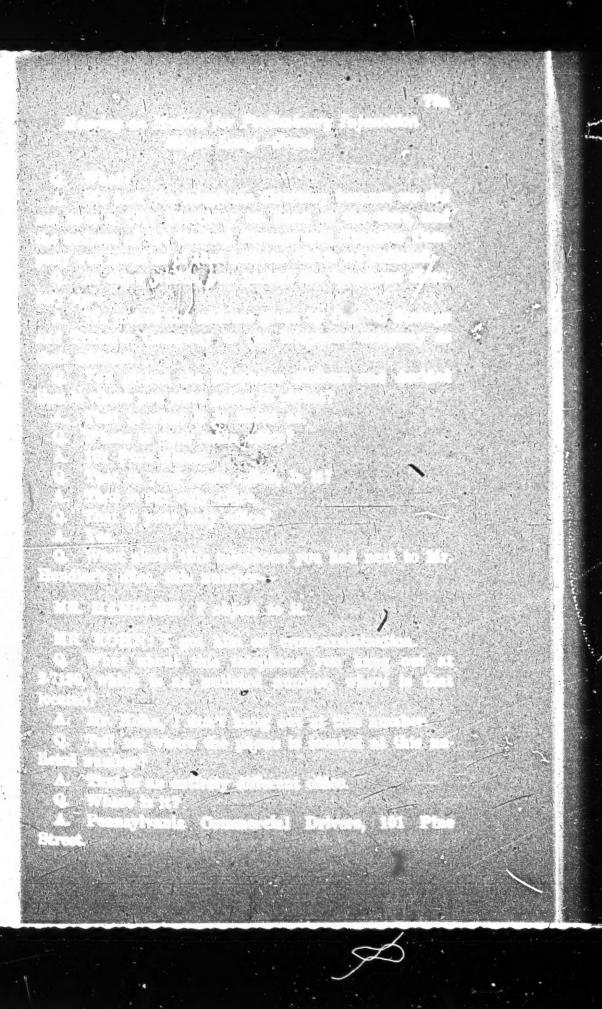
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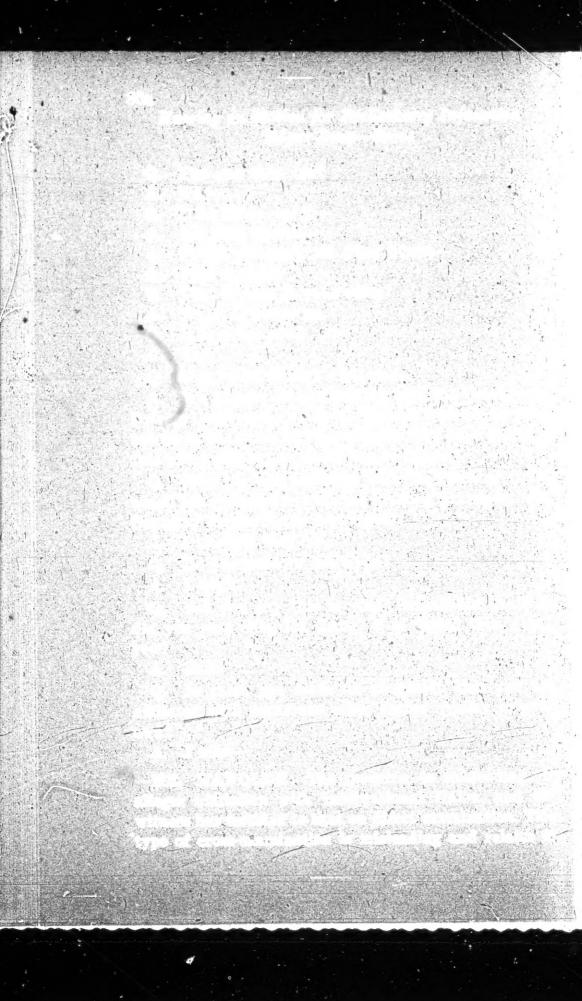
THE SOUTH (Judge Small) Objection multiple)

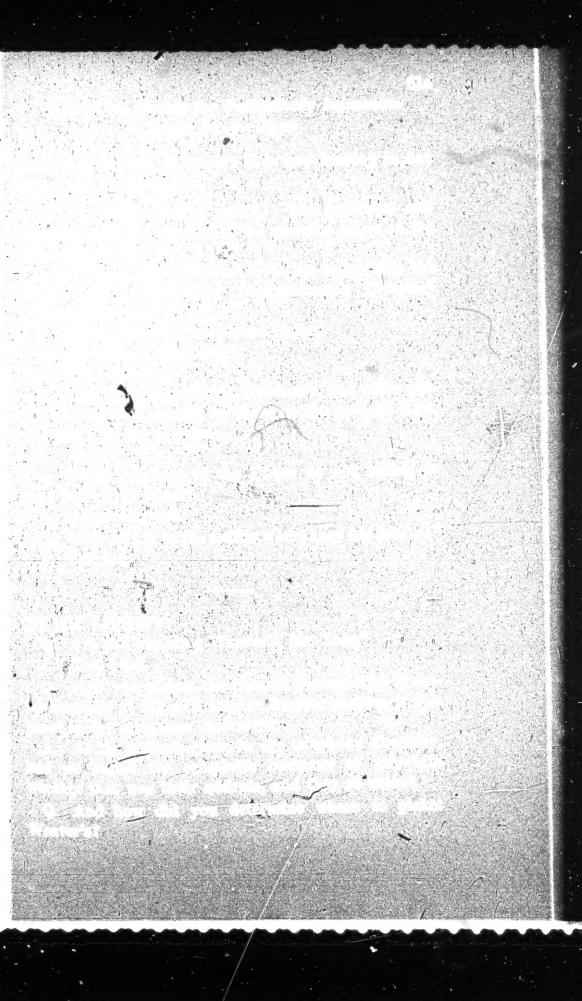
Q. Did Mr. Eline, your general business manager, tell you that Mr. Eline had called and said he was being

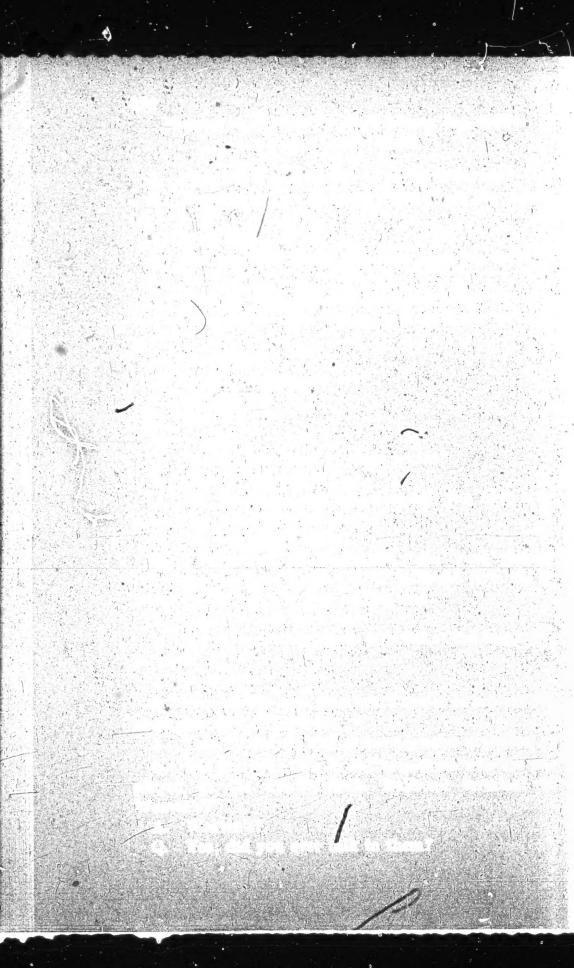
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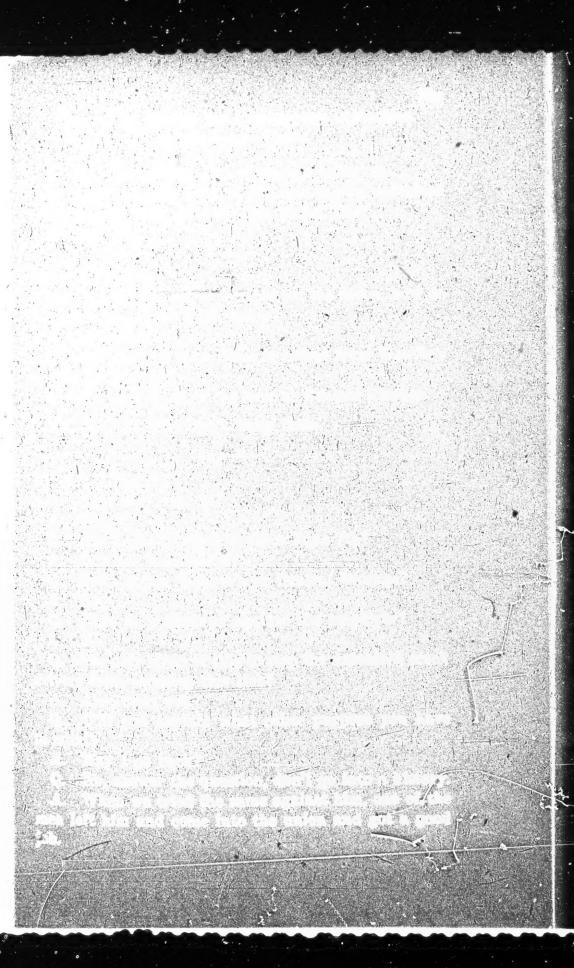
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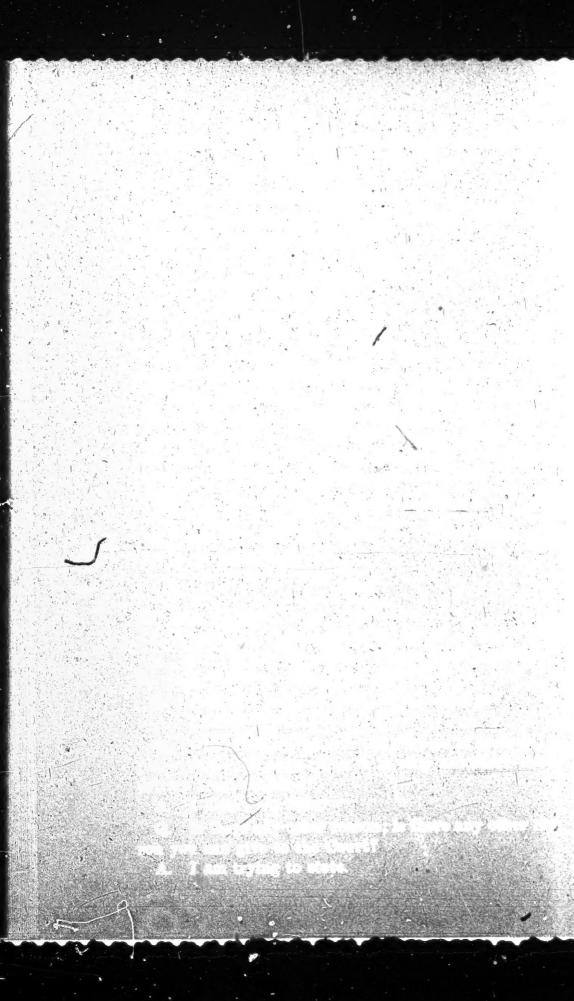


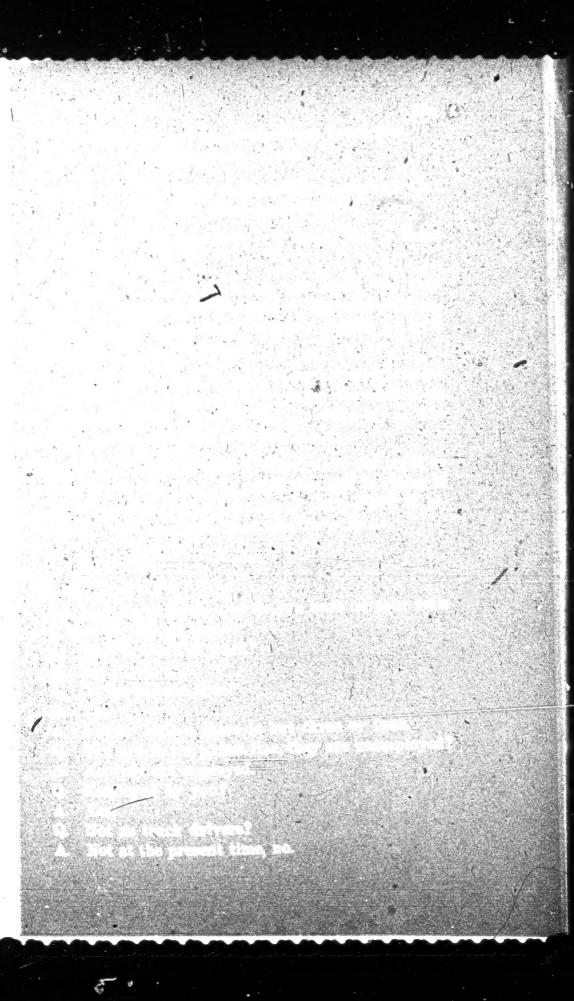


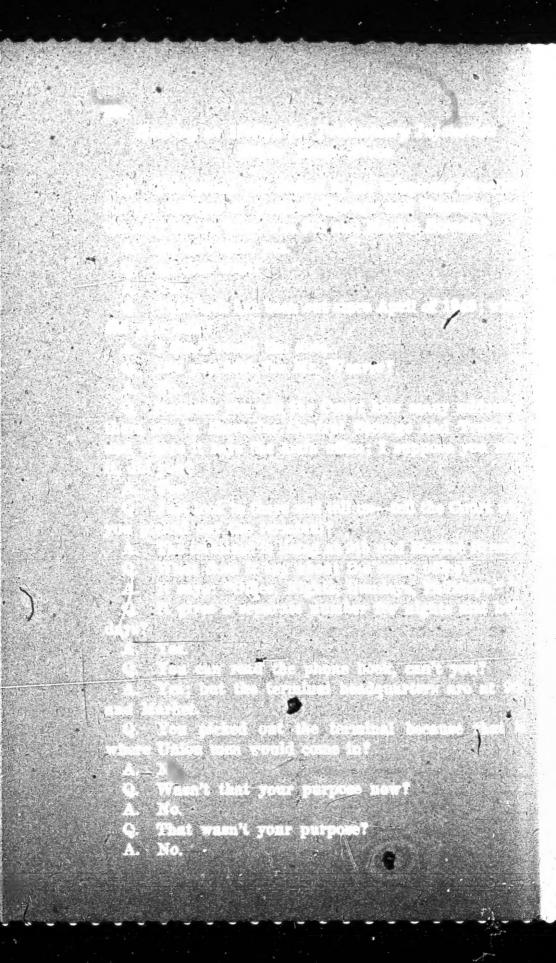












A. Tes.

(This bus conference and ele-

ALAN KLINE, having been duly sworn according law, was examined as follows:

ester un a la compagnitation de la compa

- - And where do you contemplate continuing?
 We have other dray lines that are non-union.
 Do you now realise that this may involve gr

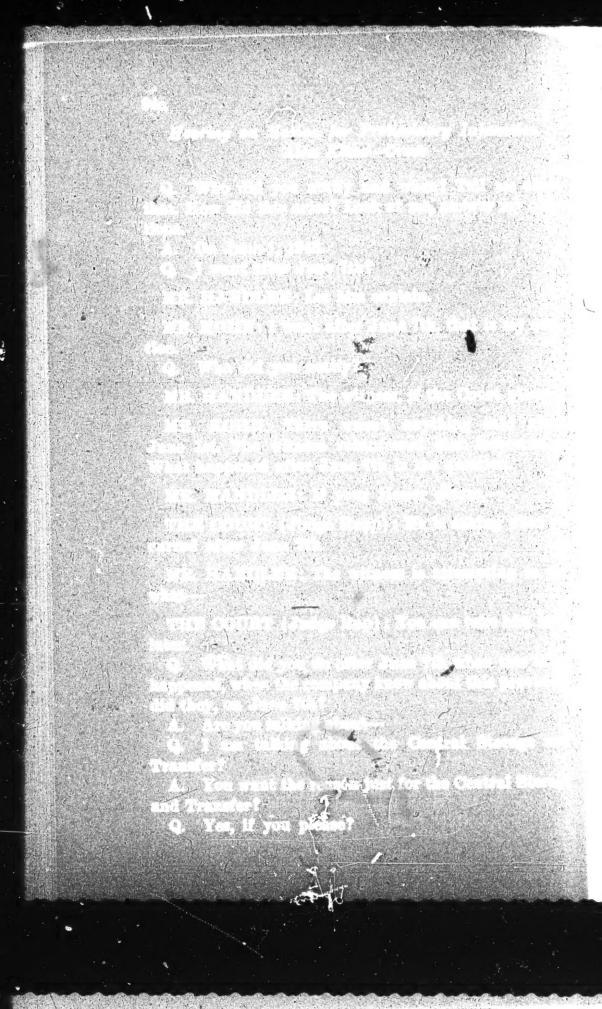
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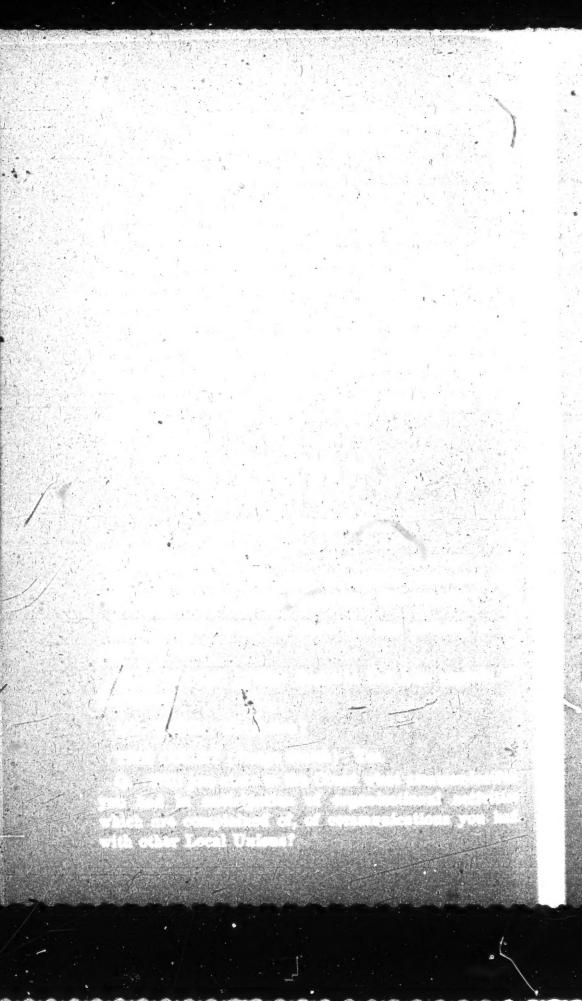
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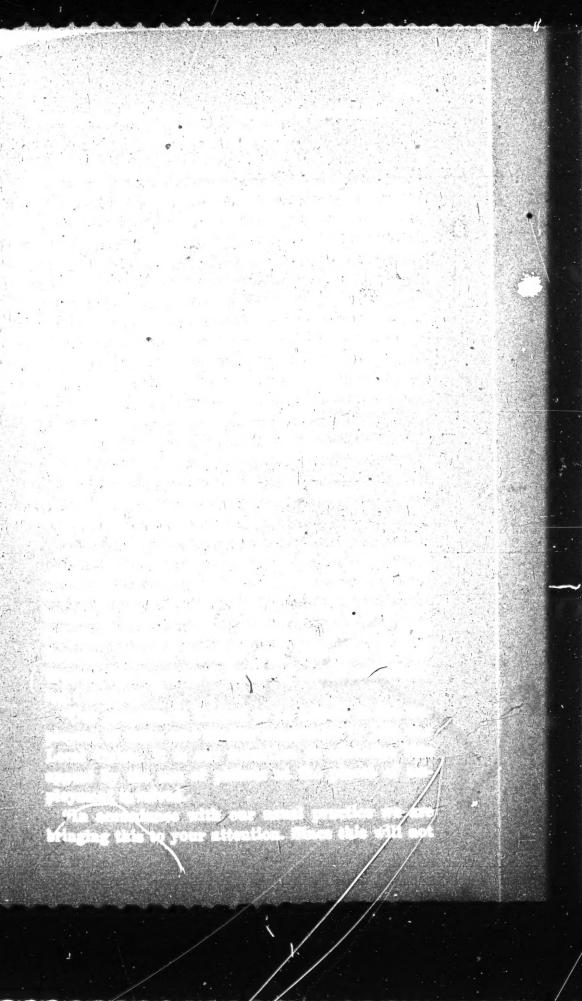
You deny getting in touch with the Reading

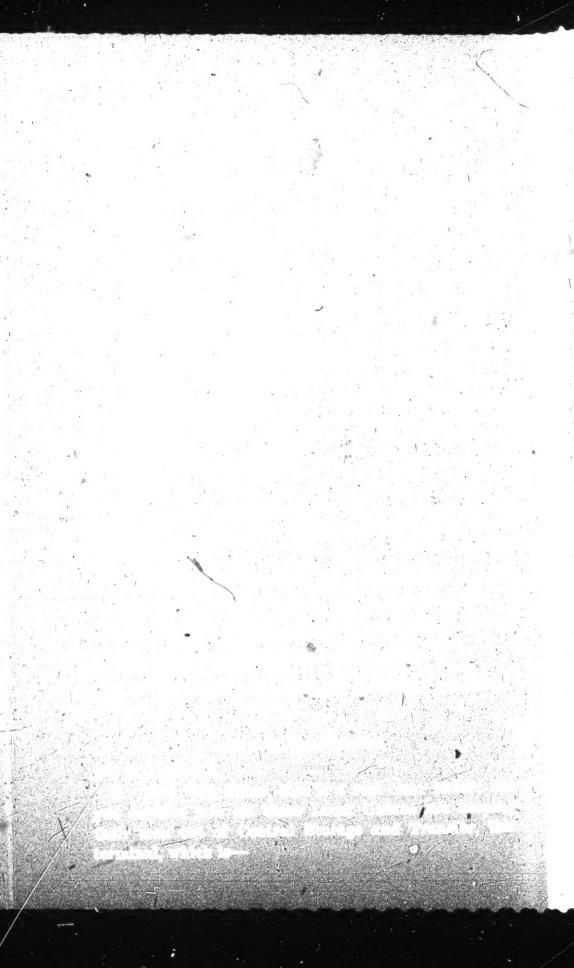
Q. You mean to tell me now that the Union i

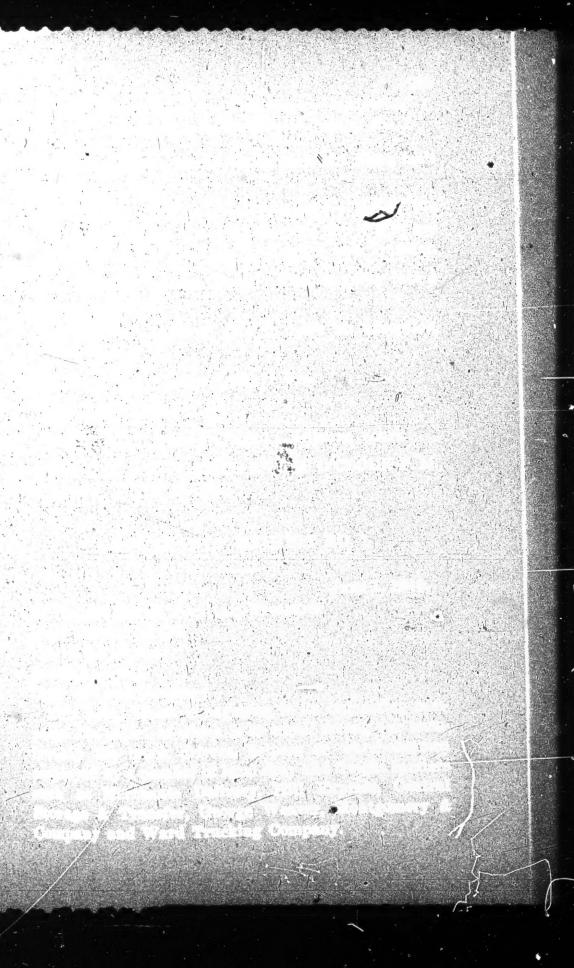










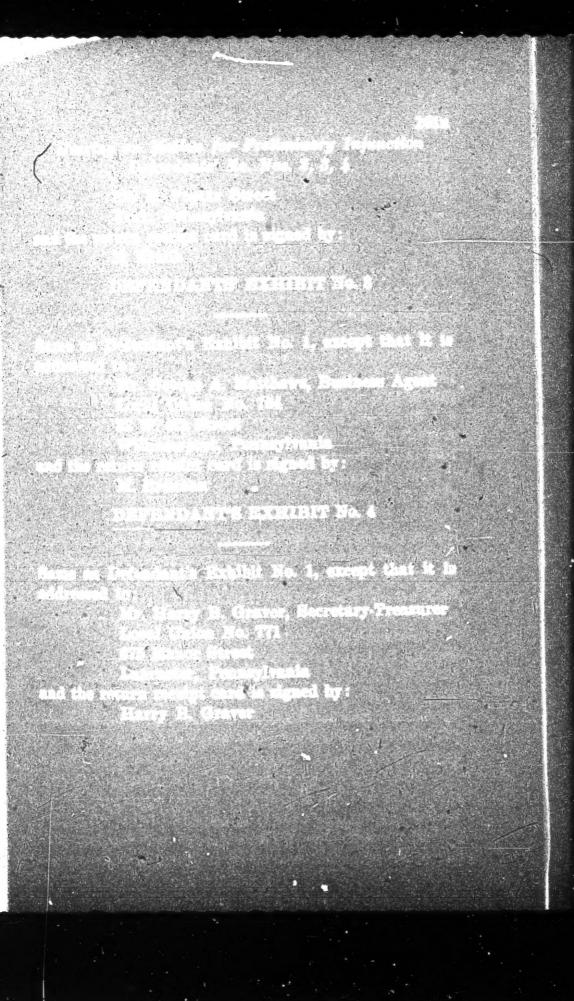


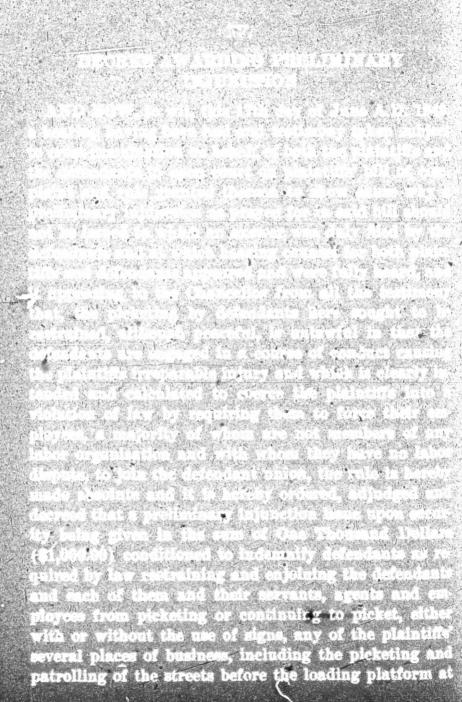
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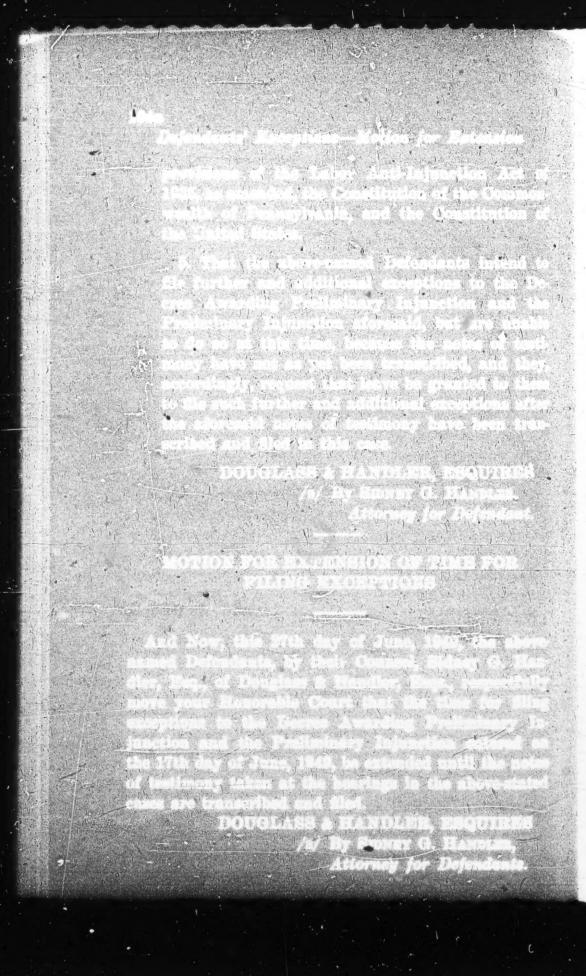
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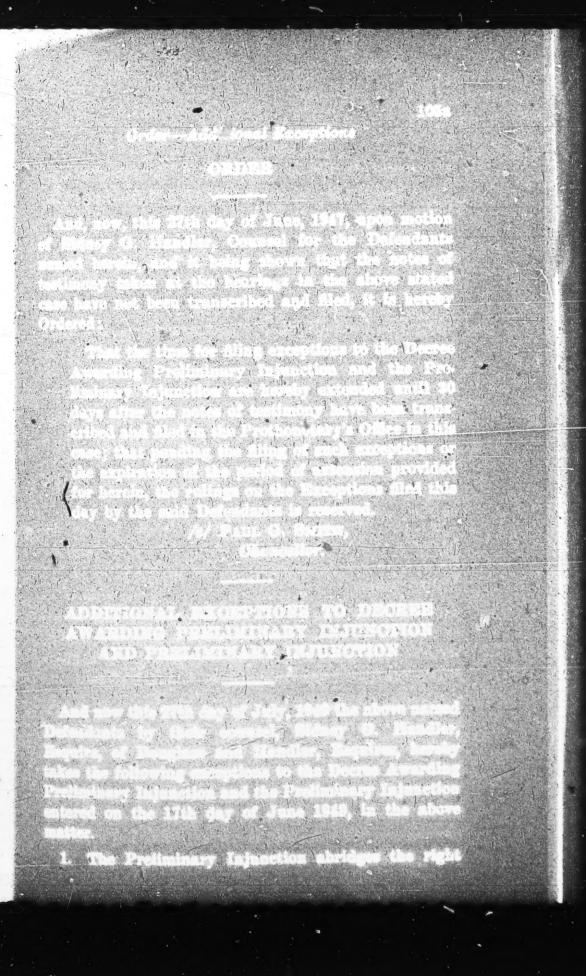
Mr. Leon Silar, Secretary Treasurer Local Union No. 430





4. The Decree Awarding Preliminary Injunction and the Preliminary Injunction is contrary to the

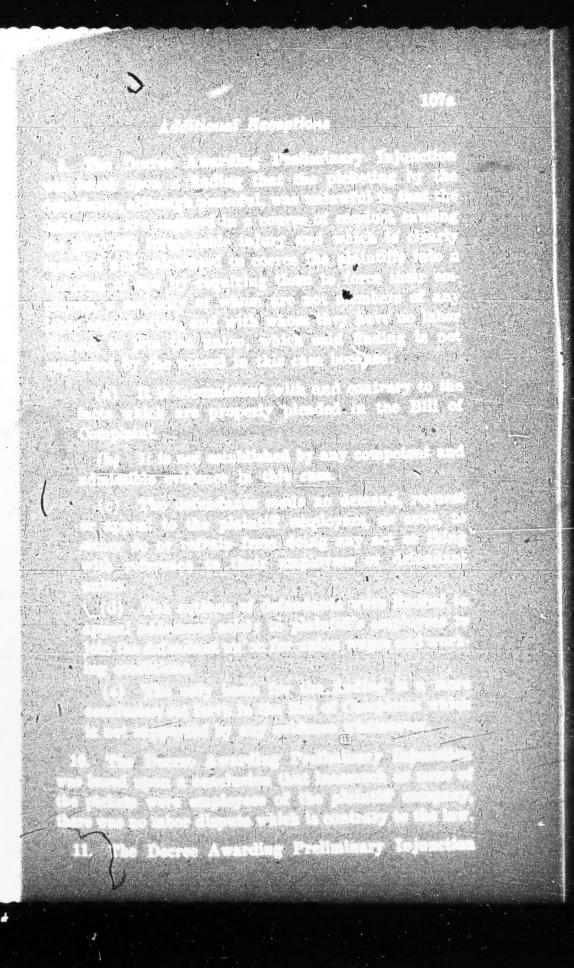


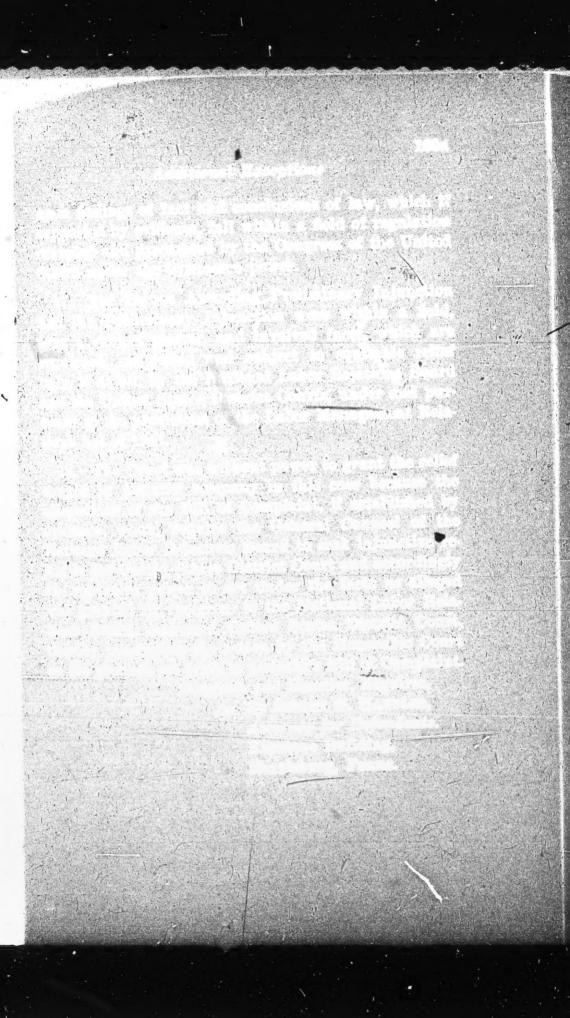


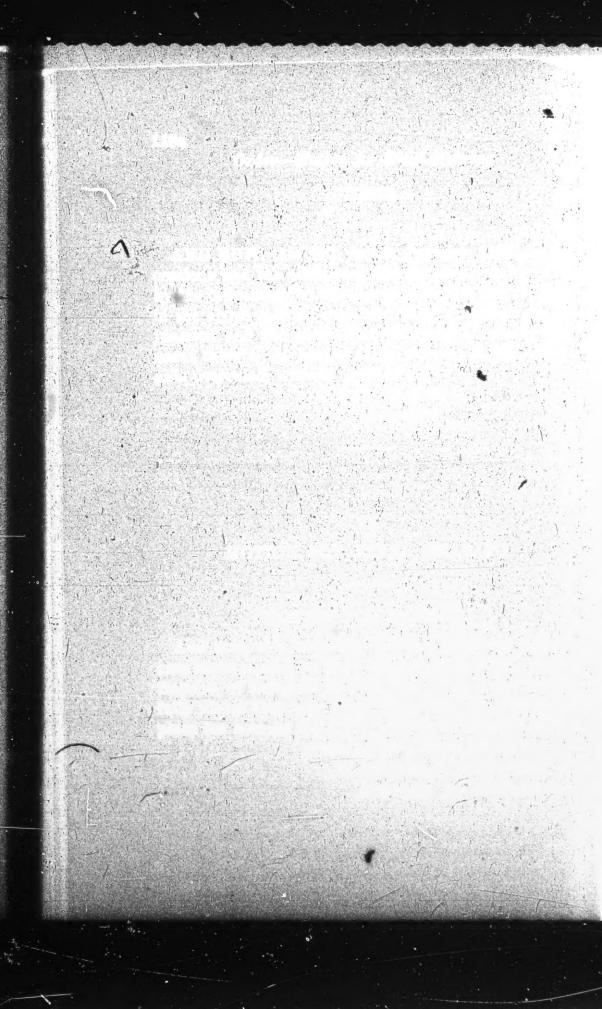
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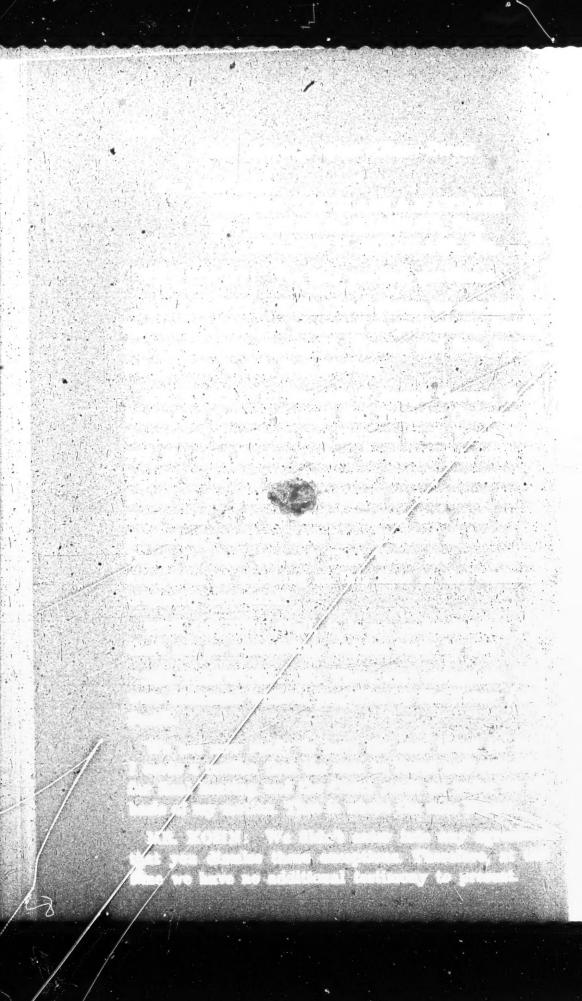
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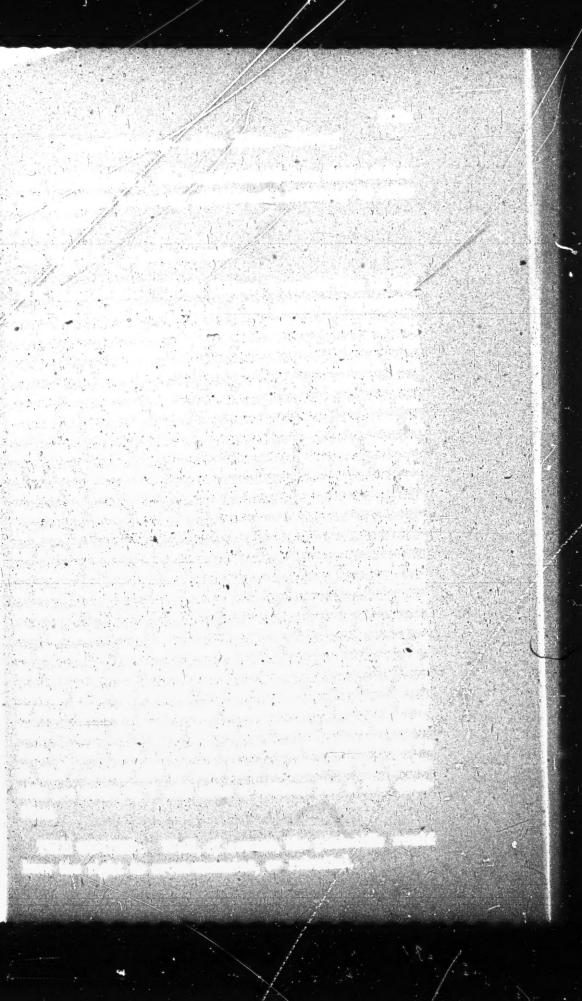


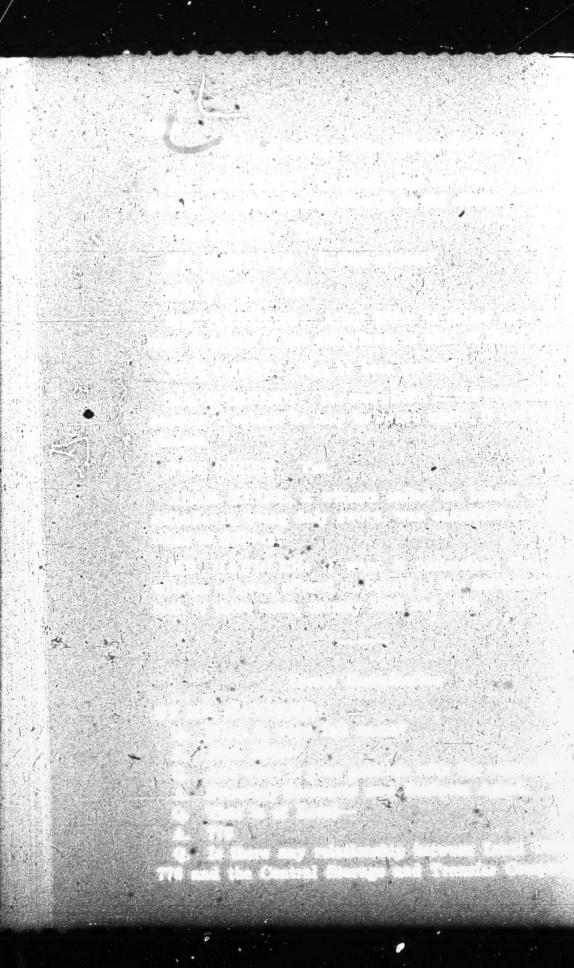


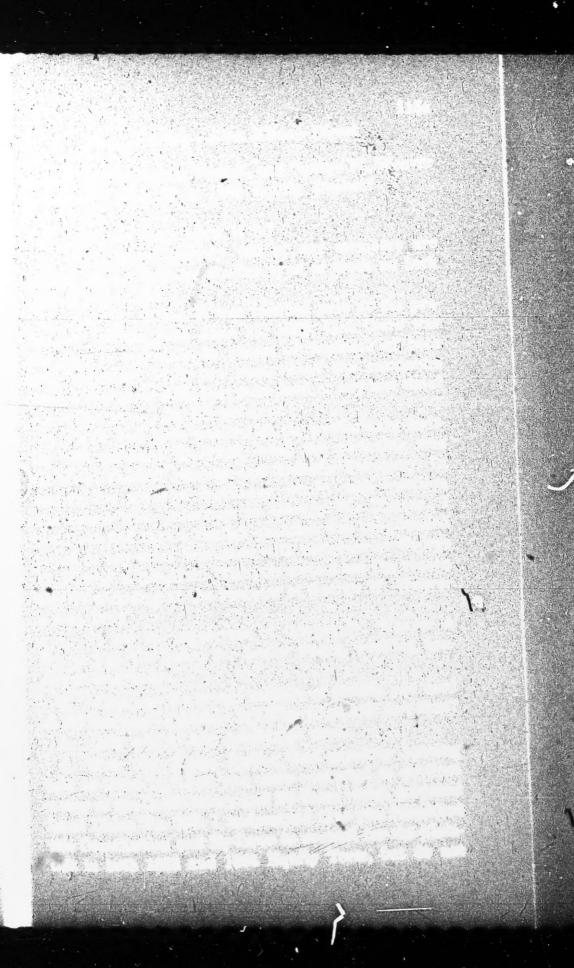




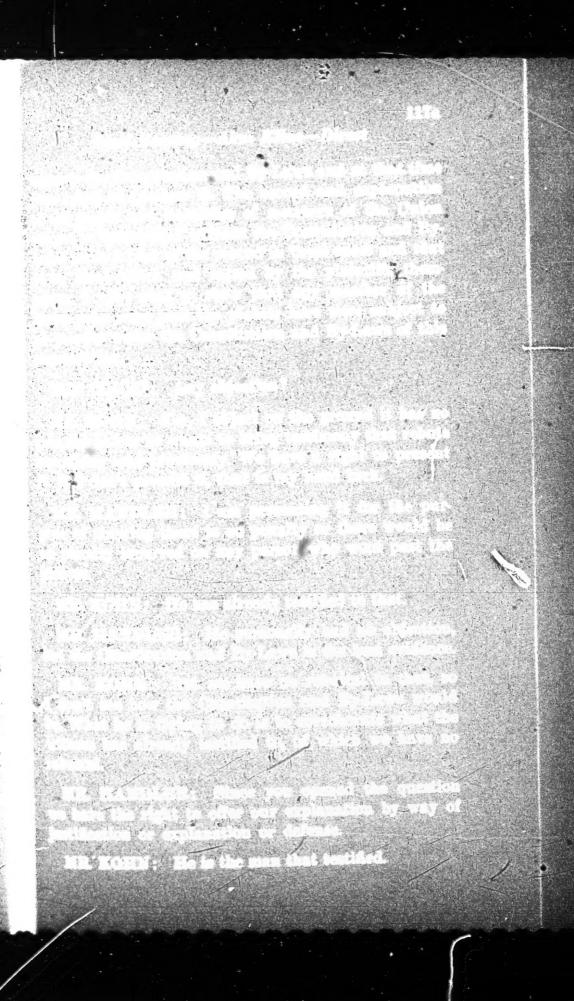












MR KOHN: If he wants to offer testimony, I object, I must admit that is the law. If it is a que of rebuttal on something that was said, then I s

Properties Labour to the process to be directly

The William Control of the Control o

Market Contract to the Contract of the Contrac

BY MR. HANDLER:

Q. I ask you, Mr. Kline, I direct your attention to

MR HANDLER Is to not in the record.

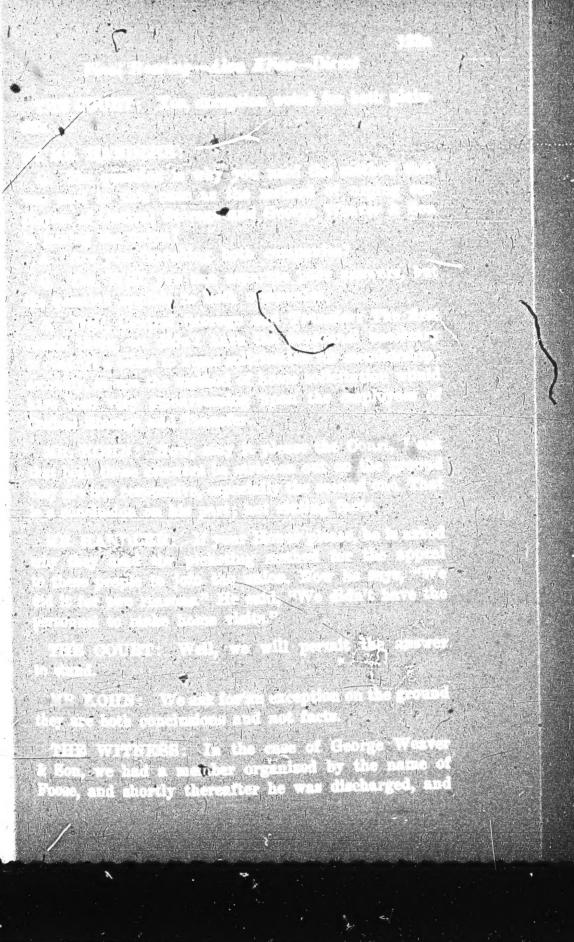
MR. KOHN: Your Honor, we object to any

/de Ads

IR ROBX. We object to that That is a leading

Q. Was there a labor dispute between Local 776 and the plainties in these two cases at that time?

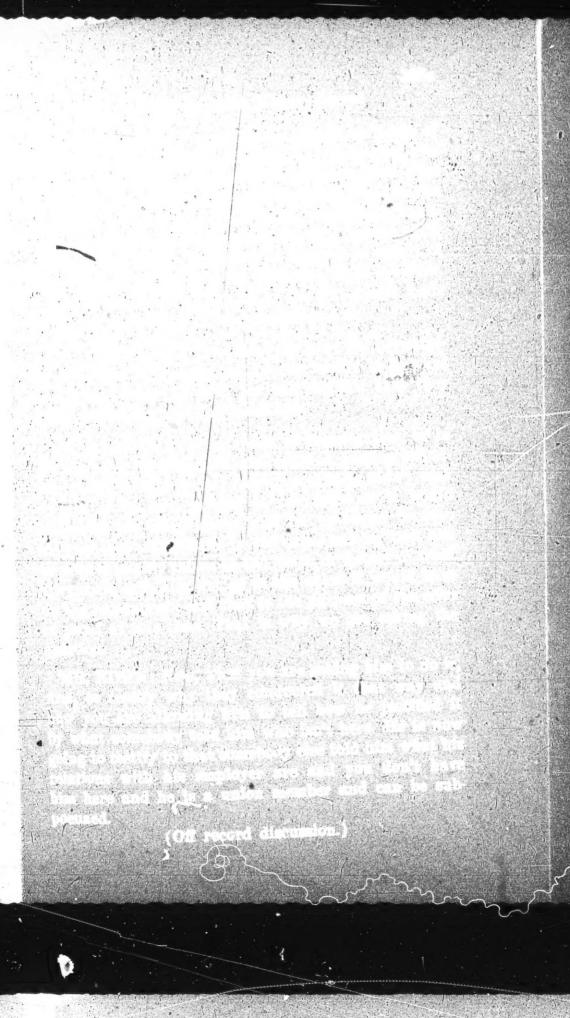
THE COURT We will permit the question MR. KOHN: Exception, your Honor?

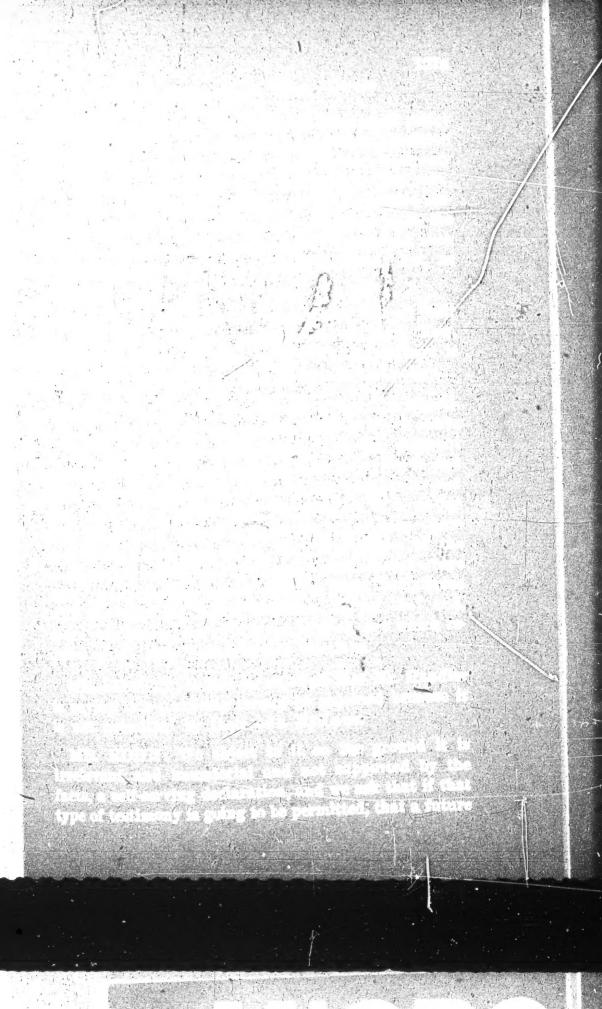


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and the distance of





Same of in the state of th and the second s ANT NAME OF THE PARTY OF THE PA

电弧电子电流

MR HANDLER: Well, that has been alleged in bill of complaints. We have a right to not the with specifically if that is the reason

and the second second second nothing were and nothing of which Mr. Kohn has been enough time characted in maximum of the largest of the maximum of the control of the largest of the larg

the street of th

TO THE STATE OF TH hop. So there therete e, there is only one questle that is the question of whether or not that strik

THE COURT: I think we struck that testimony out.

The foregoing resort of the forest the first of the control of the directed to be filed.

O PATTO G. BRIVE

 That Counsel for Defendants has since the grant ing of said continuance, consulted the Court Reports who took the notes of testimony at the hearing on July

A Company of the Comp 1 - A

Pant G. Shane.

0.

O There is a you contact using who was pro-Q. At these terminals you were the only

Q. What terminals were they that you were the only

York Motor Express, Halls Transit.

Where was that terminal?

one present?

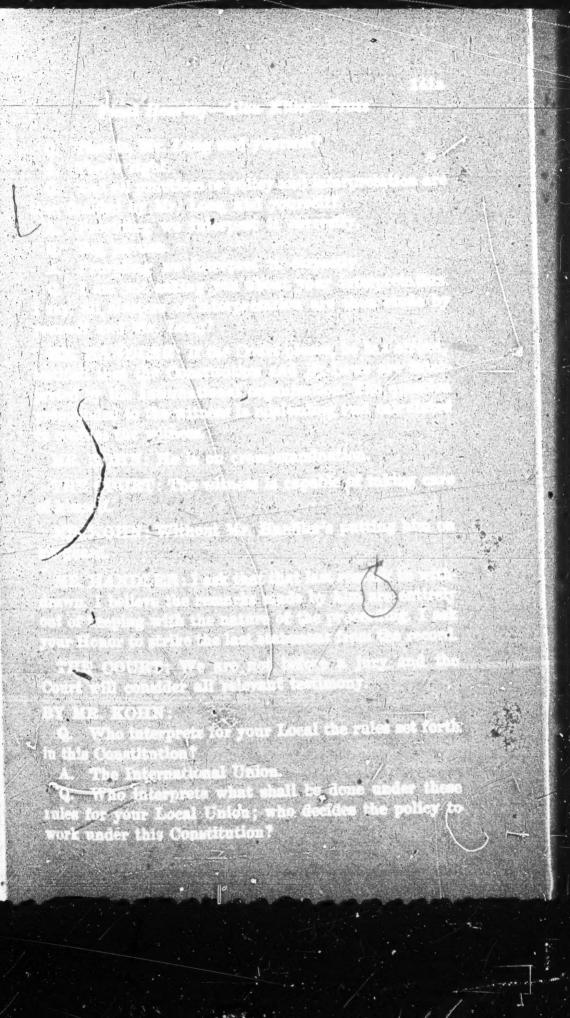
lados de la companya

THE COURT This witness said under the law, and I think the question is proper.

BY MR. KOEN:

Q. Are you a lawyer, too?

The Business Agents
Who are the Business Agents?
Mr. Long and Mr. Kline.



O I set If you are familiar with it?
A Test test familiar with it.
O You have a copy of that in your hand, di

The HAND) will. Now, if the Court please, I believed the winess should be given an opportunity to read they read to him the statement/se made, the explaination that he made that Mr. Kohn refers to

the extension being the constitution to the constitution of the co

MR. KOHN: I will refresh it for him.

to do this.

Less there that or are they under the In the point them know that it are they make the first that the first that it would be the first that the first

How do they know them?
They each have a Constitution which they carry in their pockets.

And that is a matter of interpretation?

The way assume the property of the same of

MR. KOHN, And Lank that the Court Mires.

THE COURT: The precess has answered that the before He says the labor dispute was between anion and the employer.

BY MR. KOHN: 1 statement, is that correct?

All Edition is the Handler wants to produce the second of the second of

.. THE WITNESS: Tes.

BY MR. KOHN:

- Q. What is the answer?
- A. Yes.
- Q. Yes what? What was the question you are answering?
 - A. The last question.
 - Q. What was the question?
- A. Whether he ever refused me the right to meet with the people at the terminal, and the answer is yes.
 - Q. I didn't say at the terminal.

THE COURT: He said at the offices.

BY MR. KOHN:

- Q. Don't you understand English?
- A. Yes.
- Q. Did I say the terminal?
- A. You said the offices, which used to be his terminal. In 1939 he ordered me off the property.
 - Q. In 1949?
 - A. 39.
- Q. And what were you doing there during that time, during working hours?
 - A. To ask him to organize.
- Q. And when did you go in; after working hours to talk about organizing?
- A. Went in to talk to Mr. Garner and he ordered me off the property.
- Q. Did he ever refuse you to see the employees after working hours?
 - A. No, the first instance was enough.
 - Q. The first instance was enough?
- A. I wouldn't then go back and ask him to meet with his employees on his own property.
 - Q. Don't you have four to six union members now

sic (how) that belong, in the Central Storage & Transfer?

A. We have four men that belong to the union in Central Storage and Transfer.

Q. This picketing took place for approximately one week, did it not, Mr. Kline?

A. Approximately.

Q. And during that time how many of the employees of either Weaver or Central Storage contacted you or any person in your union with a request that they be allowed to join the union?

MR. HANDLER: Now if the Court please, this is a highly improper question, the background of union hostility. The employees were anti-union. It is highly improper to ask the witness whether he was contacted.

THE COURT: There was no evidence before us that the employees were anti-union.

MR. KOHN: We think that is highly improper. It is the same thing that happened before the last question.

MR. LIPSITT: We ask that that question be stricken, as to the "anti-union."

THE COURT: We are not going to strike it, but the Court will pay no attention to your statement to the effect that the employees were anti-union.

Read the question.

(Whereupon the question was read as follows:)

"Q. And during that time how many of the employees of either Weaver or Central Storage contacted you or any person in your union with a request that they be allowed to join the union?"

THE WITNESS: I don't know. None contacted me.

BY MR. KOHN:

- Q. When was the last meeting of your union held previous to June 7, 1949; full membership meeting?
 - A. The second Sunday in May.
- Q. And at that particular time was any policy discussed in regard to the method of operation for the purposes of the letter which the union sent to the other unions?
 - A. No.
 - Q. Who wrote this letter to the other unions?
 - A. I don't recall if I did or Mr. Long.
- Q. Previous to the writing of the letter, how longbefore you wrote the letter did you consult with Mr. Handler about it?

MR. HANDLER: Now, we object to that, if the Court please. The right of the defendant to have counsel and consult counsel has no relevancy here, and it has no bearing here.

MR. KOHN: We have no objection to counsel having prepared it, your Honor.

MR. HANDLER: There is no evidence that counsel did prepare it.

MR. KOHN: Then, what is your objection?

MR. HANDLER: Why, any interrogation that relates to the private relationship between the witness and myself. It involves this client and this attorney.

MR. KOHN: The letter mentions Central Storage & Transfer.

MR. HANDLER: That has no bearing on the question that was asked the witness.

MR. KOHN: We have a right to know who dictated it.

THE COURT: It is cross-examination and we want to develop all the facts.

MR. HANDLER: Cross-examination doesn't interfere with the confidential relation between counsel and client. The witness has stated that either he or Mr. Long answered that letter.

MR. KOHN: I think the Court overruled that objection.

THE COURT: I did.

BY MR. KOHN:

Q. Now, how long before this letter went out—the last meeting, you say, with full membership, was May of 1949?

A. Second Sunday.

Q. And this letter was dated June 1, 1949. Now, how long before you dictated this letter did you and Mr. Handler consult about the contents of that letter?

A. We didn't consult.

MR. HANDLER: We object.

THE COURT: The witness has answered they didn't consult.

BY MR. KOHN:

Q. You mean Mr. Handler never saw that letter before it went out?

A. No.

Q. You did this on your own volition?

A. We did it on our own volition because no strike existed.

Q. I didn't ask you that. You just answer my questions. You did it on your own volition?

A. Yes.

Q. And you did it without the knowledge and con-

sent of the membership which had a general meeting just two weeks prior—just look at me—you can answer that question.

THE COURT: As I understand his testimony, he says this particular question wasn't discussed with the memberhip. That was his testimony.

MR. KOHN: That's right.

BY MR. KOHN:

- Q. Therefore, you then took it on yourself to write this letter?
 - A. Yes. I want to qualify the statement.

THE COURT: You may.

THE WITNESS: In order so that Joint Council wouldn't be involved—under the Article it says: "When a strike exists," it says, "the Joint Council must be first contacted." We had to write that letter to all members of the Joint Council so that they would know that there was no strike existing and the men were free to cross the picket lines.

BY MR. KOHN:

- Q. That was the purpose of your letter?
- A. That was the purpose of our letter.
- Q. And that was the only purpose you could see in it when you wrote it?
 - A. That's right.
- Q. And therefore you decided, without the sanction of the Joint Council, as to the method you were going to employ against those particular non-union operators who were mentioned in the letter?
 - A. That's right.
 - Q. You yourself determined that?
 - A. That's right.

- Q. And you are an agent of the union?
- A. That's right.
- Q. And, of course, when questions came up on the letter and the policy set forth in the letter, it was up to you also to determine the policy and the course to be pursued?

A. That's right.

Cross-Evamination

BY MR. LIPSITT:

Q. Mr. Kline, you stated in effect that that picketing was for the purpose of getting the employees at Weavers to join the union. You said that it was an advertising campaign; is that correct?

. A. I didn't make that statement. I said the purpose of picketing was to get the employees to join the union.

Q. The employees at Weavers to join?

A. That's right.

Q. And you indicated that it' was an advertising campaign?

A. That's right.

- Q. Now, I believe also either you or Mr. Long testified that during the time that you had the pickets at the Pennsylvania Terminal none of the employees did join the union?
 - A. That's right.
- Q. Now, were any of the employees themselves contacted, either by you or by members of the union?
 - A. When?
 - Q. During this campaign to get membership?
 - A. No.
 - Q. None of them were contacted personally?
 - A. No, not by word of mouth.
 - Q. Now, don't you think that in an advertising cam-

paign, that one of the most effective means is to approach the men individually? You can just answer you or no.

A. Yes, but I would like to qualify the statement.

THE COURT: You may.

THE WITNESS: We had neither the funds nor the time to contact each man. Therefore we used this method of contacting the men rather than going from door to door, and using that method, because we had tried to previously and it failed.

'Q. Then, your purpose was to contact the largest number of men in the cheapest way?

A. That's right.

Q. Do you know where the main office is of George W. Weaver & Son—well, do you know whether or not that is located at 539 North Front Street in Steelton?

A. No, I don't.

Q. You never knew that Weaver's main office is located in SteeRon and not at the railroad terminal?

A. Yes, but I would like to qualify that statement.

Q. Well, I mean you just know that?

THE COURT: He may qualify.

THE WITNESS: Weavers conduct two businesses, one moving and storage and warehousing, and the other p and d work for the Pennsylvania Railroad. They purchased the Pennsylvania Railroad business from Montgomery, who maintained their terminal on the Pennsylvania Railroad dock. Therefore, we assume that in order to organize that portion of George Weaver & Son's business we should picket the Pennsylvania Railroad Terminal.

Q. Well, weren't you interested at all in organizing

the men connected with George W. Wenver who worked out of the Steelton office?

A. No.

Q. Do you know whether or not the men who work at the terminal had occasion during a period of a week for two weeks to go to the main office?

A. No. I don't.

- Q. You don't know whether or not you could have reached the largest number of men by picketing in front of the Steelton office or by picketing in front of the terminal?
 - A. 1 know we couldn't.
- Q. You know that you could not—well, explain that. I don't know what you mean.
 - A. Bud DiGuilio-
- Q. Let me ask you this: You don't know whether or not the largest number of men could be picketed by picketing the main office?
 - A. Yes, I do know.
 - Q. You know what?
- A. I know that they couldn't be picketed by picketing the main office.
 - Q. Explain that?
- A. Bud DiGuilio, a member of our Local Union since 1938 or 1937, worked for George W. Weaver & Son for a period of two years when he came out of the Army, and when we contacted Bud—

MR. LIPSITT: I object to this. Is this something that DiGuilio told you?

MR. KOHN: Ask him whether he knew of his own knowledge.

THE WITNESS: Upon information received I found that most of the men don't go to the Steelton office, so

I personally went down to the George W. Weaver & Sons and found that the men don't take their trucks to Steelton at night. They take them to a parking lot.

BY MR. LIPSITT:

- Q. Do you know that they go down there to get paid?
 - A. No, at night they go down to the parking lot.
 - Q. How about during the course of a week?
 - A. They might go down once.
 - Q. So you could have approached all the employees of George Weaver by going to the Steelton office?
 - A. Once a week, yes.
 - Q. Now, just a few more questions here: You have stated that in your letters which were dated June 1, 1949, written to the other unions—you wanted to explain about that, that there was no strike or boycoit?
 - A. That's correct.
 - Q. Now, at the end of that letter or somewhere in the body of the letter, you asked the union employees for their cooperation in this campaign, did you not?

A. I don't know.

THE COURT: Is the letter you are referring to in evidence?

MR. KOHN: It is; Defendants' Exhibit No. 4.

THE COURT: It ought to be identified.

BY MR. LIPSITT:

Q. You don't know whether or not you used that word?

MR. HANDLER: The letter speaks for ity. d.

THE WITNESS: I don't recall.

BY MR. LIPSITT:

Q. Now, there is some evidence that at least one

union driver—Oh, incidentally, these letters were sent to the unions, were they not?

A. That's right.

Q. There is some testimony that one union driver interpreted your letter to mean that they couldn't cross the picket lines. Did any union men contact you and ask you whether or not they could cross the picket lines?

A. Yes.

Q. To you know whether some of the men approached the picket line and then went away?

A. No, I don't.

Q. Now, I would like to call your attention also to Article VI, Section 3, on page 17. If you recall, you stated that in your opinion there was a dispute or controversy existing here between the men and the employer.

THE COURT: No, it was the union and the employer.

MR. LIPSITT: Excuse me.

THE WITNESS: I stated a labor dispute existed.

BY MR. LIPSITT:

Q. Now, it says here in Article VI, Section 3: "In any controversy with an employer, not covered by a local union agreement, the local union shall make all reasonable efforts to settle the same through negotiation—" Did you seek to negotiate with Mr. Weaver?

A. No.

MR. LIPSITT: That's all.

BY MR. KOHN:

Q. You say that you sent these letters out that are Defendants' Exhibit No. 4?

A. I said I didn't know.

Final Hearing-Alan Kline-Cross-Redirect

MR. HANDLER: He said either he or the President, Mr. Long.

BY MR. KOHN:

- Q. Don't you know whether you made up this letter, or not?
 - A. Is my signature to that? I can't recall.
 - Q. I ask you who dictated that letter?
- A. Mr. Long and myself got it together but I don't recall who signed it.
 - Q. But you and Mr. Long worked it up?
 - A. Absolutely,

MR. KOHN: All right, that's all. We rest.

MR. HANDLER: May I ask the witness a question!

Redirect Evamination

BY MR. HANDLER:

Q- Mr. Kline, on the last hearing you tostified that Local 776 required membership in the union 30 days after employment, pursuant to an election by the National Labor Relations Board. Did the National Labor Relations Board issue a certification?

MR. LIPSITT: He has that in over our objection.

MR. KOHN: May it please your Honor, I don't think that is a proper question. He has been asked this and it has been objected to. It is already on the record.

MR. HANDLER: I will withdraw it.

BY MR. HANDLER:

Q. You said that the Labor Relations Board authorized you to make such conditions in the freight industry in Harrisburg. Do you recall that testimony?

MR. KOHN: We object to that. It is in the record.

Final Hearing-Alan Kline-Redirect

It is a question whether or not he recalls it. It is in the testimony and we agree that it is in the testimony as Mr. Handler read it.

MR. HANDLER: Well, then I will ask the witness whether he has available for production a certificate by the National Labor Relations Board authorizing 776 to maintain union shop conditions as provided for by the National Labor Relations Act as testified by this witness at the last hearing.

MR. KOHN: We would object to that on this ground: I thought we were through with the testimony, and if Mr. Handler is going to ask about National Labor Board certificates, and what not, that have no relevancy to the facts here presented, if the Court permits it, I am going to ask for another continuance to go into matters over which I have no control. We say it is irrelevant and immaterial

MR. HANDLER: Now, if the Court please, at the last—as far as Mr. Kohn having no knowledge at all at the last hearing—this witness testified that this union held a certificate from the National Labor Relations Board.

MR. KOHK: We say that it has no connection. He testified that he had one.

MR. HANDLER: All we are asking is leave to offer for the purposes of this record that physical certification.

THE COURT: When the testimony was given in the first place, was there any objection made and did we make a ruling?

MR. HANDLER: I think you reserved ruling. Mr. . Kohn asked that the question be stricken on the ground

Final Hearing-Alan Kline-Redirect

that what the policy is has no relevancy in this case and would in no event control the facts here. Then the Court said, "We are going to strike out the question and answer and note an exception for the defendants."

MR. KOHN: Now they want to open it up and present something in addition.

MR. HANDLER: Well, I would like to make an offer and I would like to have the physical document for the purpose of making the offer.

Let us just mark it for identification, make an offer and let the Court rule on it.

Will you mark this for the purpose of identification as Defendants' Exhibit No. 6?

(Document presented and marked for identification as Defendants' Exhibit No. 6.)

MR. HANDLER: We will make an offer and let the Court rule on it if the Court permits us.

THE COURT: Make your offer.

MR HANDLER: If the Court please, we should like to offer in evidence Defendants' Exhibit No. 6, the same being a certification issued by the National Labor Relations Board in case No. 4-UA-596. The purpose of this offer is to provide the best evidence to support the statement made by this witness at the last hearing that the Local Union's policy with reference to the requirement of union membership as a condition of employment was predicated upon a certificate issued by the N. L. B. as result of a union shop referendum. The parties in these proceedings are the Truck Owners Associations of York, Lancaster and Harrisburg, Pa., employers, and Teamsters, Chauffeurs, Warehousemen and Helpers of

America, A. F. L., Locals 430, 771 and 776, petitioners; which certification covers all the employers in the Harrisburg area under contract with Local Union 776.

I want to amend that by saying, in the motor freight carrier industry in the Harrisburg area.

That is our offer.

MR. KOHN: May it please your Honor, I have already objected to the question, which has been ruled out, and now they are trying to get in by the back road by presenting a certificate and then Mr. Handler placing an interpretation upon that certificate.

In the first place, the interpretation is a matter for the Court, if you do admit it, and not a matter for Mr. Handler to say what it means. There is no testimony on the record in regard to this, because your Honor has ruled it out. Next, we say it has no relevancy to our particular set of facts; and, lastly, we say it doesn't even refer to any of the two parties plaintiff here involved, and we ask your Honor not to admit it because no factual or legal significance can be attached thereto, there being no testimony on the record in regard thereto.

MR. LIPSITT: I will concur in Mr. Kohn's objections, because there is nothing in the testimony to show that George W. Weaver and Son is involved in any certification from the National Labor Relations Board to hold an election.

MR. HANDLER: May I just say, for the purposes of the record, that the offer was made with reference to both these cases; not just one.

MR. LIPSITT: Well, he objected and I will object for Weaver.

Final Hearing-Alan Kline-Redirect

THE COURT: The Court has not seen the Exhibit.

MR. KOHN: I am sorry, your Honor.

THE COURT: Apparently Defendant's Exhibit No. 8 is merely a certification of the results of a union authorization wherein the Teamsters Union here involved, after an election held by the employees of certain trucking employers, voted to have the Union as their bargaining representative.

MR. HANDLER: The last statement is an incorrect statement but I shan't get into any argument. It is a union shop referendum.

THE COURT: It says, "Pursuant to authority vested in the undersigned by Section 5 of the Agreement for Consent Election and by the National Labor Relations Board, the undersigned hereby certifies that the required majority of the employees eligible to vote have voted to authorize Teamsters, Chauffeurs, Warehouse men and Helpers of America, A. F. L. Locals 430, 771 and 776 to make an agreement with the employer"—Now, there was evidently an election of employees.

MR. KOHN: It wasn't in ours.

MR. LIPSITT: It wasn't in ours.

THE COURT: The employees of these two plaintiffs did not vote in this particular matter. It is difficult for me to see the relevancy in the issue now before us. If the majority of the employees of either of these two plaintiffs had voted to authorize this union to represent them, then it might be relevant.

MR. HANDLER: Well, if your Honor please, I just offered it to provide the best evidence that was required in connection with the answer of Mr. Kline, which I

will say you struck from the record. I want the offer on the record. And I took exception to the Court's ruling on the direction to strike, and I don't want the Court to ultimately say it was correct in its ruling because we didn't present the best evidence. The statement made by Mr. Kline is that it is the policy of Local 776, as far as union membership of persons employed in the freight transportation industry, is that "we require membership in the union 30 days after employment, pursuant to an election by the National Labor Relations Board, and only after such election do we have union shop clause in our contracts." And I am offering that as the best evidence to corroborate the statement made by him.

THE COURT: And for no other purpose?

MR. HANDLER: No other purpose. In other words, if the Court was right in the striking of that other question and answer on the grounds of relevancy, then the Court will still be right after this is offered and even if this were admitted, because I am only offering it as the best evidence to support that answer. I don't want that answer ultimately ruled out in this case because we didn't produce the best evidence to support it.

MR. KOHN: It is not the best evidence. It is not certified. There is nobody here to identify it, and we object to it on that ground—without proper identification.

MR. HANDLER: That is issued only by the regional director.

MR. KOHN: I don't care if it is issued by the President of the United States.

MR. HANDLER: I am willing to let the Court rule it out on your grounds.

THE COURT: There was no election by secret ballot

Final Hearing—Alan Kline—Redirect— Stenographers Certificate

of the employees of the plaintiffs in the two cases we have before us. In view of this fact, we think that De Tendant's Exhibit No. 6 is irrelevant. Therefore, we sustain the objection in each of the two cases to the offer, and note an exception for the defendant.

MR. HANDLER: Thank you. We rest.

MR. KOHN: We rest, your Honor.

THE COURT: Well, gentlemen, within thirty days after the testimony has been transcribed and lodged you will file your requests for findings of fact and conclusions of law, and put the case on the argument list.

TESTIMONY CLOSED.

I hereby certify that the evidence and proceedings were fully and accurately contained in the stenographic notes taken by me in the above cause, and that this copy is a true and correct transcript of the same.

/s/ DEWEY SANFER, Official Stenographer.

The foregoing record of the proceeding upon the hearing of the within cause is hereby approved and directed to be filed.

/s/ PAUL G. SMITH,
Judge.

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STIPULATION AND ORDER

GEORGE W. WEAVER & SON, INC.

Plaintiff

VE.

TEAMSTERS CHAUFFEURS and HELPERS LOCAL UNION No. 776 (AFL) ED LONG, PRESI-DENT, ALLEN KLINE, BUSINESS MANAGER, ITS OTHER OFFICERS AND AGENTS

Defendants

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

Sitting in Equity

No. 1883 Equity Docket

STIPULATION

WHEREAS, heretofore two bills of complaint were filed in the Court of Common Pleas of Dauphin County, Sitting in Equity, the one to No. 1883 Equity Docket by George W. Weaver & Son, Inc., plaintiff, against Teamsters Chauffeurs and Helpers Local Union No. 176 (AFL), Ed Long, President, Allen Kline, Business Manager, its other officers and agents, defendants, and the other to No. 1884 Equity Docket by Joseph Garner and A. Joseph Garner, trading as Central Storage and Transfer Company, plaintiffs, against the same defendants; and

WHEREAS, the prayer of both bills is to restrain certain picketing, peaceful in nature and averred by

the defendants in each case to be for organizational purposes and, therefore, legal and otherwise not subject to restraint by this Court; and

WHEREAS, both actions, which involve the application of the same legal principles, were tried together and in each action the Chancellor granted a preliminary injunction restraining the picketing; and

WHEREAS, the Chancellor is prepared within the next several weeks to file his adjudication in the action brought by No. 1884 Equity Docket.

NOW, THEREFORE, it is hareby stipulated and agreed by and between William W. Lipsitt, Esq., of Shelley and Reynolds, and Sidney G. Handler, Esq., of Douglass and Handler, respectively attorneys for the plaintiff and the defendants in the action brought to No. 1883 Equity Docket, that the final order, judgment, decision or decree entered by this Court in the action brought to No. 1884 Equity Docket, or, if any appeal be duly taken therefrom by either plaintiff or defendants, the final order, judgment, decision or decree entered, or directed to be entered, by the Court last resorted to by either of said parties, shall be conclusive, binding and determinative of all the issues raised by the pleadings and testimony in the above captioned action brought to No. 1883 Equity Docket.

WILLIAM M. LIPSITT, Esq. of SHELLEY & REYNOLDS, Attorneys for Plaintiff.

Sidney G. Handler, Esq. of Douglass & Handler, Attorneys for Defendant.

, Stipulation—Order—Adjudication

ORDER OF COURT

AND NOW, July 5, 1951, the foregoing Stipulation of Counsel is approved and ordered filed.

By the Court, /s/ Paul G. Smith, Judge.

XI

ADJUDICATION AND NISI DECREE

BY THE CHANCELLOR:

This action was instituted by plaintiffs to enjoin defendants from picketing one of plaintiffs' places of business, which picketing plaintiffs averred in their bill was intended or calculated, by causing it immediate and irreparable damage, to coerce them to compel or require their employees to become members of defendant union.

Upon filing of the bill of complaint this Court granted a rule on defendants to show cause why a preliminary injunction as therein prayed for should not issue. Prior to the hearing on this rule, defendants filed an answer to the bill wherein they, further, moved to discharge the rule and dismiss the bill. Therein they averred, among other things, that the picketing in question was at all times conducted in a peaceful manner "for the sole purpose of appealing to the employees of Plaintiff Company to join the Defendant Union to gain union wages and working conditions"; that "such picketing is a lawful exercise of the right of freedom of speech as guaranteed by the Constitutions of the Commonwealth of Pennsylvania and the United States"; that "the loss to Plaintiff's business, if any, is not actionable nor is Plaintiff entitled to the relief prayed for because

Defendants' conduct and activity is lawful and proper"; and finally, that the bill of complaint should be dismissed because it "fails to allege facts constituting a cause of action within any of the exceptions to the Pennsylvania Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, as amended."

After a full hearing on plaintiffs' rule, a preliminary injunction was granted solely on the only issues then before the Court as raised by plaintiffs' bill and defendants' aforesaid answer and motion to dismiss. Defendants thereupon filed exceptions to this action. These exceptions, at the request of defendants, were subsequently overruled without prejudice and never argued The case then proceeded to final hearing, after which both parties filed requests for findings of fact and conclusions of law and submitted the matter to the Chancellor on briefs. Most of defendants' requests were predicated on the issues raised by their answer and motion to dismiss. Also therein, defendants questioned the jurisdiction of this Court to enjoin the picketing on the ground, as set forth, inter alia, in their 7th request for conclusions of law that "The plaintiff's business involves and it is engaged in interstate commerce thereby subjecting the controversy to the exclusive jurisdiction of the National Labor Relations Board pursuant to the provisions of the National Labor Relations Act of 1947." However, it was not until some time in July, 1951, and after we had written our adjudication, predicated solely on the issues raised in the bill, answer and motion to dismiss and under the as-

^{&#}x27;The same issue was raised in the exceptions filed by defendants to the entry of the preliminary injunction. The issue could then have been decided expeditiously had defendants, as suggested by the Chancellor, placed these exceptions on the argument list to be passed upon by the Court en banc. Nevertheless, for some reason defendants did not choose so to do.

Adjudication-Findings of Fact

sumption that the defendants had abandoned it, that they, for the first time, pressed their contention that the National Labor Relations Board had exclusive jurisdiction in the instant controversy.

After consideration of all the testimony, including that given at the hearing on the rule to show cause which, by stipulation of counsel for all parties, was to be considered as though taken on final hearing, we make the following

Findings of Fact

- 1. Plaintiffs, Joseph Garner and A. Joseph Garner, trading as Central Storage and Transfer Company (hereinafter called "Central"), are engaged in the trucking and storage business with principal office at 11th and State Streets, Harrisburg, Pa.
- 2. Central, at the time of the filing of the Bill and for many years prior thereto, maintained terminal and platform facilities at the rear of the Reading Railroad Freight Station at 9th and Market Streets, Parrisburg, Pa.
- 3. At this terminal, Central operates a local freight pick-up and delivery service not only for the Reading Railroad Company and its trucking division, the Reading Transportation Company, with both of whom it has contracts, but also for approximately fifteen other trucking firms.
- 4. Central in the local pick-up and delivery service operates as a common carrier in the City of Harrisburg and, in certain instances, within a ten mile radius thereof. Otherwise, the incoming and outgoing freight deposited at the terminal by the Reading Railroad Company, the Reading Transportation Company, Central, or other trucking firms, is interchanged to other car-

Adjudication—Findings of Fact

riers for delivery to the point of destination outside of Central's territory.

- 5. Certain freight handled at Central's Reading pick-up and delivery terminal is shipped on the Reading Railroad from points outside the state to consigner in and about the City of Harrisburg where Central completes the chain of transportation from the point of origin to the point of destination on the Reading Railroad freight bill of lading. However, the picketing here in question did not prevent Central from making deliveries of these interstate shipments.
- 6. Defendants, Teamsters Chauffeurs and Helpers Local Union, No. 776 (hereinafter with its officers and agents called the "Union"), is an unincorporated labor organization with offices at 101 Pine Street, Harrisburg, Pa. It is a branch of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and is also affiliated with the American Federation of Labor. Ed Long and Allen Kline are respectively President and Secretary-Treasurer of the Union and its business agents.
- 7. The members of the Union are engaged as truck drivers and helpers in the freight trucking industry in which Central is also engaged.
- 8. Central has been in business for thirty years and presently employs twenty-four persons as truckers, helpers and platform men, four of whom are members of the Union.
- 9. During the time Central has been in business it never has had any controversy or labor dispute with its employees or any of them with respect to wages, hours or working conditions.

- 10. Approximately fifteen years ago a representative of the Union contacted Central for organizational purposes. Central then told the Union that it was up to the employees to join or not to join. A meeting between the Union representative and the employees was then arranged. However, nothing resulted therefrom. The Union never thereafter requested Central to enter into negotiations with it concerning the representation of Central's employees.
- 11. During the many years Central has been in business it has never in any way, directly or indirectly, put pressure on its employees to join or refrain from joining a labor organization or to engage or refrain from engaging in concerted activities for the purpose of collective bargaining.
- 12. Central has never objected to and presently has no objections to any of its employees joining the Union.
- 13. At no time has any question regarding representation of Central's employees been raised or decided.
- 14. The wages paid by Central to its employees are above the union scale for this area.
- 15. Under date of June 1, 1949, the Union sent a letter under the signatures of its President and Secretary Treasurer, by registered mail, to Local Teamster Unions in communities in the neighborhood of Harrisburg such as York, Lancuster, Reading and Williamsport. This letter was as follows:

"Dear Sir and Brother:

This Local Union is engaging in an organizing campaign the object of which is to enroll among our membership the truck drivers, helpers or warehousemen employed by a number of local dray and freight

carriers such & Merchants Delivery, Hill Express, Central Storage and Transfer, George Weaver, Montgomery & Company and Ward Trucking Company. "Our program is limited to an appeal to the employees of these and similar companies to join our Local Union. It is our intention to advertise this appeal by the use of pickets at the places of employment involved.

"In accordance with our usual practice we are bringing this to your attention. Since this will not create the usual strike attuation, we are particularly anxious that you will not misunderstand the extent, object and purpose of our program and activities. It is limited strictly to that described in this letter.

"Appreciating as we do your usual willingness to lend a helping hand in any situation, we are, in view of the program limiting our activities to an appeal to the employees at their place of employment, and accordingly must request that your Local Union refrain from any activity in connection with these companies, and their employees in order that no one may misconstrue our objects and purposes."

- 16. Thereafter, on the morning of June 7, 1949, rotating pickets, two at a time, none of whom were employees of Central, were placed by the Union, one in front of Central's Reading leading platform and the other at the entrance thereto, carrying signs bearing the following legend: "Local 776 Teamsters Union (A. F. of L.) wants Employees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions."
- 17. This type of picketing, which at all times was conducted in an orderly and peaceful manner, continued until preliminary enjoined on June 17, 1949.

- 18. At the time the Union placed the pickets there was no labor dispute between Central and its employees, none of whom were on strike.
- 19. Joseph Garner, one of the co-partners of Central, called Allen Kline by telephone about 10:20 on the morning of June 7, 1949, to inquire why the Union was picketing Central's Reading pick-up and delivery terminal. Kline replied " nothing to that, " this is the means of advertising, " , instead of coming around and asking you for the names of each and every one of your employes, and we would go from door to door, which would mean a lot of time and effort, we are simply doing this to try to sell the men to join the Union."
- 20. During the conversation referred to in the preceding finding of fact, Garner told Kline that the presence of pickets was causing trailer loads to stay outside the picket line, to which Kline replied "I don't think any harm will come of it." Garner said, "Mr. Kline, there is harm, they are ruining our business." Again Kline said, "I don't think any harm is coming to you."
- 21. Thereafter on the morning of June 7, 1949, Garner called Kline a second time and again told him that the trailers were stopping at the pickets and would not drive through the line. Whereupon Kline replied, "I don't see any harm from this." At this time Garner also stated "You know, Mr. Kline, our place of business, our company owns building at 11th and State Street, where our men come in, and, I said, why don't you go down in front of our property which we own, rather than at the Bending Company, we don't own this place of business," to which Kline again replied "I don't think any harm will come of it."

22. On June 8 or 9, 1949, Joseph Garner talked to Edgar Long, President of the Union, who at the time was standing beside a picket. Garner asked the picket what his instructions were. Long replied that the pickets had no instructions. Garner then said to Long "Do you realize what harm this is doing?" However, Long made no reply and walked away.

23. The convenientions set forth in findings of fact Now 19, 20, 21 and 22 above constitute the only convenients between the Garners and the officers and representatives of the Union with respect to the picketing here in question.

24. From the beginning of the picketing by the Union on June 7, 1949, or from the day thereafter, to the time the Court preliminarily enjoined the same on June 17, 1949, Contral's Reading pick up and delivery terminal did practically no business with unionised establishments such as the Reading Transportation Company, Shirk's Motor Express, West Shore Motor Express, Lancauter Transportation Company, Hartman's Transportation Company, Horn's Motor Express, Daily Motor Express and other interchange carriers the truck operators of which refused to cross the picket line.

25. During the period of the picketing the business of Central at its Reading pick-up and delivery terminal fell off 95%, or approximately 250,000 lbs. of freight daily, with a resulting loss to it of between \$400.00 to \$500.00 per day.

26. The Union, other than as set forth in finding of fact No. 10, did not directly or indirectly contact Central in an effort to have it recognize the Union as the bargaining agent for its non-union employees or contact

sack employees in an effort to have them become mem-

- The Union at no time threatened, either directly indirectly, to picket Central's Reading pick up and belivery terminal if it did not compel its unorganized employees to join the Union. Neither did the Union make any demand on Central that it discharge these employees and hire union members in their place if they refused so to do.
- 28. The Union did not picket the places of business of scutral employers doing business with Central or in any other way attempt to coerce such neutral employers from transporting freight to and from Central's Beading pick-up and delivery terminal.
- 29. The Union did not induce or encourage concerted action by the employees of neutral employers to refuse to transport freight to and from Central's Beading pick-up and delivery terminal.
- 30. The teamster members of the Union and of neighboring Union amiliates refused to enter Central's Reading pick-up and delivery terminal solely by reason of the well established labor union practice not to cross a picket line placed by the Union or by one of its amiliates.
- 31. The contracts made by the Union and its Union amiliates with freight trucking concerns provide that union employees cannot be discharged if they refuse to go through a picket line.
- 32. Under the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, adopted August 11, 1947, which governs the Union here, a member of the said

Union cannot be penalized for passing such pickets as were placed by the Union at Central's terminal because no strike existed within the purview of section 6, page 58 of the Constitution.

- 38. The policy of the Union with reference to union membership of persons employed by employers in contractual relations with the Union is to require membership in the said Union 30 days after employment pursuant to a certificate of authority insped by the National Labor Relations Board.
- 34. 'Central's operations at its Reading pick-up and delivery terminal were unique in that the great bulk of the business there transacted by it was with unionized trucking concerns.
- 35. The Union knew that, if the employees of unionized trucking concerns doing business at said terminal refused to pass a picket placed at the entrance thereto. Central would sustain large financial losses and its business thereat would be ruined with ultimate loss of its terminal rights.
- 36. If the picketing had not been enjoined, Central would have lost not only its contract with the Reading Transportation Company but also its terminal facilities with the Reading Railroad Company.
- 37. Central's business is highly competitive and, by reason of the picketing, Central lost not only the good will of certain of its customers built up during many years but also business which has gone to its competitors who operate in the same locality.
- 38. The officers of the Union knew that each day the picketing here in question continued Central would sustain substantial business losses.

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- 39. The acts and conduct of the Union were an abuse of the right to picket rather than a means of peaceful and truthful publicity.
- 40. The Union, its officers and agents, carried the picketing here in question beyond the field of persuasion for organizational purposes into the field of intimidation or business compulsion deliberately designed to coerce Central, by causing it substantial business losses, to compel or require its employees to become members of the Union.

Discussion

In the case at bar the equitable jurisdiction of this Court over the subject matter has been challenged by the Union. This Court assumed jurisdiction and heretofore entered a preliminary injunction restraining the Union from picketing Central's pick-up and delivery terminal located at the Reading Railroad Freight Station, 9th and Market Streets, Harrisburg, Pa., hereinafter sometimes called the "Terminal," and the entrances thereto. This action was predicated solely on the only issues then before the Court as raised by plaintiffs' bill, defendants' answer thereto and motion to dismiss. These issues were whether the picketing by the Union, although at all times peaceful and allegedly for organizational purposes, was a lawful exercise of the constitutional guaranty of free speech or whether said picketing was in furtherance of an unlawful purpose and, therefore, subject to restraint by this Court under its general equity jurisdiction unrestricted by the Pennsylvania Labor Anti-Injunction Act of 1937, as amended.

After consideration of all the testimony given at the hearing held on Central's rule to show cause as it related to these issues, we concluded that the Union had carried the picketing here in question beyond the field of persuasion for organizational purposes into the field of intimidation deliberately designed to correctentral, by causing it substantial business losses, to compel or require its employees to become members of the Union; that the picketing was for an unlawful purpose; and that, therefore, it was not protected by the constitutional guaranty of free speech but was subject to restraint by this Court.

Some months after the picketing was preliminarily enjoined, the Union, for the first time, pressed its contention that Congress had vested in the National Labor Relations Board exclusive jurisdiction to investigate, approve or take action to forbid the conduct of the Union here in question and that, therefore, this Court had no power to act in the matter.

Certain of Central's activities are in interstate commerce because they form a link to an interstate railress serving Harrisburg. (See finding of fact No. 5). With respect to such activities, our State Supreme Court in Pennsylvania Labor Relations Board v. Frank, 362 Pa. 537, arising under the Wagner Act, quoted and applied pp. 545-6, the language of the Supreme Court of the United States in National Labor Relations Board v. Fainblatt, 306 U. S. 601, 606, 59 S. Ct. 668, as follows:

". "The power of Congress to regulate interstate commerce is plenary and extends to all such commerce be it great or small . . . The language of the National Labor Relations Act seems to make it plain that Congress has set no restrictions upon the jurisdiction of the Board to be determined or fixed exclusively by reference to the volume of interstate commerce involved . . . The Act on its

face thus evidences the intention of Congress to exercise whatever power is constitutionally given to it to regulate commerce by the adoption of measures for the prevention or control of certain specified acts—unfair labor practices—which provoke or tend to provoke strikes or labor disturbances affecting interstate commerce. Given the other needful conditions, commerce may be affected in the same manner and to the same extent in proportion to its volume, whether it be great or small.

'See also separate opinion of Mr. Justice Frankfurter in Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U. S. 767, 782, 67 Sup. Ct. 1026."

Nevertheless, the mere fact that certain of Central's activities may involve interstate commerce is not conclusive against the jurisdiction, of this Court if the Union tactics which we have found to have been coercive are neither forbidden by federal statute nor legalized or approved thereby: International Union, United Automobile Workers v. Wisconsin Board, 336 U. S. 245, 69 8. Ct. 516 (1949).

Since we have found that Central is engaged in interstate commerce, did Congress vest in the National Labor Relations Board exclusive jurisdiction to investigate, approve or take action to forbid the conduct of the Union here in question or is such conduct still governable by this state? The jurisdiction of this Court over the subject matter of the instant proceeding depends chiefly upon the answer to this question.

It is well settled that whenever the employer-employee relationship is one over which Congress has the power of regulation and with regard to which Congress has acted, state power is suspended and cannot constitutionally be exercised unless Congress has otherwise provided and, further, that the criterion to determine the validity of the exercise of state power is not whether the agency administering the federal law has acted upon the relationship in a given case but rather whether Congress has asserted its power to regulate such relationship: Bethlehem Steel Company v. New York State Labor Relations Board, 330 U. S. 767, 67 S. Ct. 1026 (1947); Pittsburgh Railways Company, etc., Employees', Case, 357 Pa. 379 (1947).

Accordingly, where a case involves the employer employee relationship in the field of interstate or foreign commerce regulated by the National Labor Relations Act of 1935 (29 U. S. C. A. §151 et seq.), referred to hereinafter as the "Wagner Act," as amended by the Labor Management Relations Act of 1947 (29 U. S. C. A. Pocket Parts, §141 et seq.) referred to hereinafter as the "Taft-Hartley Act," the great weight of authority holds that the National Labor Relations Board has exclusive jurisdiction and state courts and agencies have none except to the extent that the federal law does not attempt to cover a particular part of that field or the NLRB has ceded jurisdiction thereover to a state.

^{*}Under the Wagner Act primary jurisdiction of unfair labor practices as therein specified on the part of an employer engaged in interstate commerce was given to the NLRB thereby divesting the jurisdiction of this state over such practices: Pennsylvania Labor Relations Board v. Frank, 382 Pa. 537. However, the Wagner Act did not attempt to regulate unfair practices on the part of a labor union. Therefore, if this case had arisen while the Wagner Act was in force we are satisfied that, even though Central was engaged in interstate commerce, this Court had jurisdiction of the subject matter under the principles applied by our State Supreme Court in Wilhank et us. v. Chester and Delaware Counties Bartenders, Hotel and Restaurant Employees Union et al., 360 Pa. 48 (1948), Certiorari denied, 336 U. S. 945, 69 S. Ct. 812, and Phillips et al. v. United Brotherhood of Carpenters and Joiners of America, et al., 362 Pa. 78 (1949). It

Thus the provisions of the Wagner Act, as amended by the Taft-Hartley Act, do not permit concurrent regulation of peaceful strikes for higher wages in industries affecting commerce since Congress has occupied this field and closed it to state regulation: Amalgamated Ass'n. of Street, Electric Railway & Motor Coach Employees of America, Div. 998, et al. v. Wisconsin Employment Relations Board, 340 U. S. 383, 71 S. Ct. 359 (1951). Again, the United States Supreme Court has held in five other cases that the state law could not consistently stand with federal law. In International Union of United Auto Workers v. O'Brien, 339 U. S. 454, 70 8. Ct. 781, (1950), a state act covering all industry permitted strikes at a different time than the federal act and required, unlike federal law, a majority authorisstion for any strike. In Plankinton Packing Co. v. Wisconsin Board, 338 U. S. 953, 70 S. Ct., 491 (1950), a state superimposed upon federal outlawry of conduct as an "unfair labor practice" its own finding of unfairness. In LaCrosse Telephone Corp. v. Wisconsin Board, 336 U. S. 18, 69 S. Ct. 379, (1949), a conflict was found in the bargaining units determined under state and federal acts. In Bethlehem Steel Co. v. New York Labor Board, supra, the state recognized a foremen's union contrary to the established policy of the NLRB. And in Hill v. State of Florida ex rel. Watson, 325 U. S. 538, 65 S. Ct. 1373, (1945), the state was found to have interfered with the freedom in selecting bargaining agents as guaranteed by the federal act.

It thus appears that in all of the cases just cited there was a direct conflict between state and federal legisla-

was not until Congress amended the Wagner Act by the Taft-Hartley Act that unfair labor practices on the part of a labor union as specified in section 8 (b) thereof (29 U.S.C.A. Pocket Parts \$158) were subjected to the primary jurisdiction of the NLRB.

tion and the federal act so collided with the state lay as to displace it. In the case at bar, however, we have no conflict between the Taft-Hartley Act and any act of this state. The sole question here is whether, by reason of the provisions of the Taft-Hartley Act, this Court in the exercise of its general equity jurisdiction no longer has the power to restrain, at the instance of a private individual and under the facts as we have found them, peaceful picketing allegedly for organizational purposes or whether such individual must seek such relief through the NLRB. Neither our State Supreme Court nor the United States Supreme Court appear to have directly passed upon this question. And, until one of these Courts does, we are constrained, for the reasons hereinafter set forth, to hold that this Court has jurisdiction. In so finding we have not overlooked the so-called "Supremacy Clause" Article VI, Clause 2, of the Constitution of the United States whereunder the laws of Congress take precedence over any contrary state law. Neither have we overlooked the so-called "Negative Implications of the Commerce Clause," the theory of which is that when Congress, in a law regulating interstate commerce, has indicated an intention "to occupy" the field there is no longer room for state legislation in that field. But we are not here dealing with state legislation colliding with federal legislation, and the question still remains as to whether Congress has actually occupied the field involved in the instant controversy.

The Taft-Hartley Act prohibits some concerted labor activities and regulates others in considerable detail. The act contains two provisions which the Union contends, as we understand its position, operate to vest exclusive jurisdiction in the NLRE. The first of these provisions is section 10 (a) (29 U. S. C. A. Pocket Parts

§160).8

The second of these provisions is Section 7 (29 U. S. C. A. Pocket Parts §157). Section 10 (a) has been generally construed as giving the NLRB primary jurisdiction over all cases involving unfair labor practices on the part of a labor organization as specified in section 8 (b) thereof (29 U. S. C. A. Pocket Parts §158). The Union avers that, if it was guilty of any unfair labor practices—a fact denied by it—such practices violated section 8 (b) (1) (A) and (B) as well as section 8 (b) (4) (A) and (B) of the Taft-Hartley Act. However, the phrase "to restrain or coerce," as

*Section 10 (a), insofar as here material, provides:

"(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce.

Section 7, insofar, as here material, provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities "."

Section 8 (b), insofar as here material, provides:

"(b) It shall be an unfair labor practice for a labor organiza-

tion or its agents-

"(1) To restrain or coerce" (A) employees in the exercise of the rights guaranteed in section 157 of this title: "; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to " transport, or otherwise handle " any " materials or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease " transporting, or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other

used in section 8 (b) (1) (A), has been construed by the NLRB not to include primary peaceful picketing but only such picketing as is accompanied by violence or threats, overt or implicit. Thus in United Brother hood of Carpenters and Joiners, Local 74 (AFL), et al. and Ira A. Watson Co., d.b.a. Watson's Specialty Store, 80 NLRB, No. 91, Case No. 19-OC-1, (1948); OCH Labor Law Reporter, NLRB Decisions 1948-49, par. 8374, the Board adopted the finding of the trial examiner that section 8 (b) (1) (A) was designed to prevent the more violent types of restraint or coercion by unions, such as "goon squads," threats of violence as well as other types of threats, and mass picketing; not the more subtle and indirect types of conomic coercion of non-union employees through their employer's loss of business." To the same effect, see also Ryan Construction Corporation and United Electrical, Radio and Machine Workers of America et al., 85 NLRB, No. 76, Case No. 35-CC-7 (1949), CCH Labor Law Reporter, NLRB Decisions 1949-50, par. 9137; United Brother hood of Carpenters and Joiners of America, District Council of Kansas City, Mo., and Vicinity (AFL), et al. and Wadsworth Building Co., Inc., et al., 81 NLRB, No. 127, Case No. 17-CC-1 (1949), CCH Labor Law Reporter, NLRB Decisions 1948-49, par, 8657, at page 9184. Upon application of these Board rulings it necessarily follows that, since the Union's organiational picketing was peaceful and attended by no force, violence or threats of any kind, such picketing was not an unfair labor practice within the meaning of section

employer to recognize or bargain with a labor organization to the representative of his employees unless such labor organization has been certified as the representative of such employees

^{*}This case was later affirmed on other grounds by the U. S. Supreme Court. See 341 U. S. 707, 71 S. Ct. 966, (1951).

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8 (b) (1) (A). Likewise, since the requirements of restraint and coercion apply equally to section 8 (b) (1) (B) and since the Union at no time, either before or after it placed the pickets, made any demands on Central to recognize it for the purpose of collective bargaining or the adjustment of grievances, in our opinion, the Union was not guilty of any unfair labor practice within the meaning of section 8 (b) (1) (B). Neither can we find that the Union was guilty of any unfair labor practices as specified in sections 8 (b) (4) (A) or (B). And this because the Union did not picket neutral employers doing business with Central or in any other way prevent such neutral employers from transporting freight to and from Central's Reading pick-up and delivery terminal; and neither, under our finding of fact No. 29, did the Union induce or encourage concerted action by the employees of neutral employers to refuse so to do. See also Sperry v. Building & Construction Trades Council of Kansas City et al., 15 Labor Cases, par. 64,836, (1948), wherein the United States District Court, District of Kansas, held that picketing an employer for the purpose of causing him to employ only union members does not constitute an unfair labor practice in violation of sections 8 (b) (4) (A) or (B), even though such picketing causes the employees of other employers to refuse to deliver mpplies to the picketed employer.

We will now consider section 7 of the Taft-Hartley Act which the Union contends is a catch-all intended to prohibit state regulation of all labor activities in interstate commerce not regulated by section 8 (b). Under this construction a state could neither regulate nor control any concerted labor activities covered by section 8 (b) nor any such activities left unregulated by said section. We cannot adopt this contention. To do

so would be directly in the teeth of the decisions of the Supreme Court of the United States. Thus in International Union, United Automobile Workers v. Wisconsin Board, 336 U. S. 245, 69 S. Ct. 516 (1949), hereinafter called the "Briggs-Stratton Case," being return of certiorari to the Supreme Court of the State of Wis consin, it was held that Congress in both the Wagner and the Taft-Hartley Act designedly left open an area for state control: that recurrent or intermittent stoppages of work by employees was neither forbidden by these acts nor was such conduct legalized and approved thereby; and that, therefore, the state police power was not superseded by the federal legislation over a subject matter normally within the exclusive power of a state and reachable by federal regulation only because of its effects on interstate commerce which Congress mty regulate. In so holding, Mr. Justice Frankfurter, speak ing for the majority of the Court, 336 U.S., said at page 253:

"Congress made in the National Labor Relations Act no express delegation of power to the Board to permit or forbid this particular union conduct, from which an exclusion of state power could be implied. The Labor Management Relations Act declared it to be an unfair labor practice for a union to induce or engage in a strike or concerted refusal to work where an object thereof is any of certain enumerated ones. \$8 (b) (4), 61 Stat. 146, 141, 29 U. S. C. §158 (b) (4). Nevertheless the conduct here described is not forbidden by this Act and no proceeding is authorized by which the Federal Board may deal with it in any manner. While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the states. * * *."

And at page 254:

or overlapping between the authority of the federal and state Boards, because the federal Board has no authority either to investigate, approved or forbid the union conduct in question. This conduct is governable by the state or it is entirely ungoverned."

Thereupon, after considering and discussing the purpose and effect of section 7 the Court held that Congress had not given employees or labor unions any right to engage in unlawful or other improper conduct and in conclusion said at page 265:

"We sind no basis for denying to Wisconsin the power, in governing her internal affairs, to regulate a course of conduct neither made a right under federal law nor a violation of it and which has the coercive effect obvious in this device."

500 also Aller.-Bradley Local v. Wisconsin Board, 315 U. B. 740, 62 S. Ct. 820 (1942).

Upon application of the principles laid down in the Briggs-Stratton cases we are of the opinion that the factual situation now before us falls within the area designedly left open by section 7 of the Taft-Hartley Act to state control. A very recent case directly in point is Kincaid-Webber Motor Company v. Quinn et al., decided July 9, 1951, by the Supreme Court of the State

of Missouri and reported in 20 CCH Labor Cases, par. 66,424. Here defendants requested plaintiff, a motor car dealer, to recognize their union as the exclusive bargaining agent for plaintiff's employees. At an election held by the NLRB on petition of defendants made at the suggestion of the plaintiff, the union lost out. The next morning a picket was placed by the defendants before plaintiff's place of business carrying a sign informing the public that plaintiff was non-union. By reason thereof, plaintiff sustained substantial losses and brought an action in the state court to enjoin the picketing. Therein, plaintiff averred that the picketing was for an unlawful purpose since it was intended to coerce plaintiff to recognize a labor organization rejected by its employees. Defendants, on the contrary, contended, as does the Union in the instant case, that the picketing was for a lawful purpose; that the state court had no jurisdiction of the subject matter which jurisdiction was vested exclusively in the NLRB; and that any injunction would be an abridgement of free doin of speech in violation of defendants' constitutional rights. The lower court enjoined the union's picketing The Supreme Court of Missouri in affirming this judgment said, page 79,746:

sustained in many cases under both the Norris LaGuardia and Taft-Hartley Acts. The cases usually involved the question of whether or not the purpose of the picket was to coerce the performance of an unlawful act. See Fred Wolferman, Inc. v. Root, 356 Mo. 976, 204 S. W. (2d) 733, l. c. 735, 736 (5) (6,7) (13 Labor Cases par. 64,008). In that case this Court en banc said: Both the answer and the evidence do disclose that one of the purposes for the picketing is for giving information to the

public. While we assume that purpose is lawful still when it is coupled, as it is here, with unlawful purposes, the fact one of several purposes is lawful does not make the picketing lawful. Picketing for both lawful and unlawful purposes is unlawful. See Kestatement Torts Sec. 796. Cf. Baush Machine Tool Co. v. Hill, 231 Mass. 30, 120 N. E. 188; Folsom Engraving Co. v. McNeil, 235 Mass. 269, 126 N. E. 479.' To the same effect see State ex rel. Allai v. Thatch, 361 Mo. 190, 234 S. W. (2d) 1, l. c. 9 (8,9) (19 Labor Cases par. 66,042), where it was contended that under the Taft-Hartley Act a state court had no jurisdiction to issue an injunction in such cases; this Court en banc there said: 'But the foregoing Rederal statutes do not preempt the jurisdiction of the State courts in all instances. It has been held by this and other State courts and the United States Supreme Court that while peaceful picketing is generally permissible under the Fourteenth Amendment, Const. U. S. for a lawful and proper purpose, yet such picketing may be enjoined when the purpose is unlawful; See also Empire Storage & Ice Company v. Giboney, 357 Mo. 671, 210 S.W. (2d) 55 (13 Labor Cases par. 64,009, affd. 336 U. S. 490, 69 S. Ct. 684 (16 Labor Cases par. 65,062).

"Appellants in their reply brief cited Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees v. Wisconsin Employment Relations Board, 71 S. Ct. 359 (19 Labor Cases par. 66,194), as holding that a state court does not have jurisdiction of this case. As we read the case it is not in point and does not so hold. That case held the Wisconsin Public Utility Anti-Strike Law to be in conflict with the Taft-Hartley Act and

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therefore not enforceable. In the case before us no state regulation is involved.

"The contention of defendants that the injunction herein violates their constitutional rights must be denied. In the Wolferman case, supra, 204 8. W. (2d) l. c. 736, 737 (8, 9) (13 Labor Cases par. 64,008), it was ruled that freedom of speech does not include the right to picket to persuade an employer to violate a statute. The question was considered at length and no useful purpose would be served by again discussing the point."

In the instant case there was no labor dispute between Central and its employees, none of whom were on strike. Neither Central nor the Union in any way attempted to restrain or coerce these employees in their right to self-organization guaranteed by section L Therefore, we cannot see how this section has any application to the facts of the case at bar. As said by Mr. Justice Frankfurter, speaking for the majority of the Court in Hughes et al. v. Superior Court of California 339 U. S. 460, 70 S. Ct. 718, 339 U. S. at 465, (1950): "However general or loose the language of opinions, the specific situations have controlled decision." And the specific situation now before us is readily distinguish able from the specific situations before the United States Supreme Court in the O'Brien and other cases heretofore cited wherein that Court considered and discussed section 7 in striking down injunctions issued by state courts under state laws. Further, the instant situation is not controlled by certain other cases relied upon by the Union involving unfair labor practices under the Taft-Hartley Act. Also, on the question of

Gerry of California v. Superior Court, 194 P. 2d 689, Calif. Supreme Ct. / 1948); Ex Parte De Silva, 199 P. 2d 6, Calif. Supreme

jurisdiction of a state court, see Robinson, d.b.a. Robinson Freight Lines v. Chauffeurs, Teamsters, Warehousemen and Helpers, Local No. 621, et al., 20 CCH Labor Cases, par. 66,463, Tenn., Ct. of Apps., (1951); Montgomery Building and Construction Trades Council, et al. v. Ledbetter Erection Company, Incorporated. 20 CCH Labor Cases, par. 66,407, Supreme Court of Alabama (1951); Standard Grocer Co. v. Local No. 406 of AF of L, 32 N. W. 2d, 519, 321 Mich. 276, (1948).

Accordingly, for the reasons hereinbefore set forth, we hold that primary jurisdiction over the conduct of the Union here in question did not vest in the NLRB under either section 10 (a), section 7 or any other provision of the Taft-Hartley Act.

The Union's two remaining contentions are first, that the picketing here in question was a lawful exercise of the constitutional guaranty of free speech, and second, that Central's bill should be dismissed because it failed to allege facts constituting a cause of action within any of the exceptions to the Pennsylvania Labor Anti-Injunction Act. We shall consider these questions together as they appear to be interrelated.

Under the latest pronouncements of the Supreme Court of the United States and of this state, it is now well settled that peaceful picketing of an employer's place of business for organizational purposes by unions whose members are engaged in the same trade or in-

Ct. (1948); Pocahontas Terminal Corporation v. Portland Building and Construction Trade Council et al., 93 F. Supp., 217, U. S. Dist. Ct., Dist. of Maine, Southern Division (1950); Norris Grain Co. v. Nordaas, 46 N. W. 2d 94, Minn. Supreme Court (1950); rehearing denied, 19 CCH Labor Cases, par. 66,201 (1951); Goodwins, Incorporated et al. v. Hagedorn, et al., 19 CCH Labor Cases, par. 66,272, N. Y. Supreme Ct., N. Y. Co., (1951), affirmed, 20 CCH Labor Cases, par. 66,409, N. Y. App. Div., (1951). Attention is directed to the dissenting opinion by Dore, J. in the Goodwins case, reported in 20 CCH Labor Cases, pp. 79,692-4.

dustry as that of the picketed employer is, under certain conditions, an exercise of the right of free speech guaranteed by the Fourteenth Amendment to the Constitution of the United States. However, under these decisions it is equally well settled that peaceful picketing loses the protection of the constitutional guaranty and is not beyond the control of the State if the purpose which it seeks to effectuate is unlawful or otherwise steps over the line from persuasion to coercion: Hughes et al. v. Superior Court of California, supra; International Brotherhood of Teamsters, etc. Union, Local 309, et al. v. Hanks et al., 339 U. S. 470, 70 S. Ct. 773 (1950); Building Service Employees International Union, Local 262, et al. v. Gazzam, 339 U. S. 532, 70 S. Ct. 784 (1950); Wilbank et ux. v. Chester and Delaware Counties Bartenders, Hotel and Restaurant Employees Union et al., 360 Pa. 48 (1948), certiorari denied, 336 U. S. 945, 69 S. Ct. 812; Phillips et al., v. United Brotherhood of Carpenters and Joiners of America et al., 362 Pa. 78 (1949).8 Cf. Kincaid-Webber Motor Company v. Quinn et al., supra.

The nature of picketing and the legal limits thereof were considered in the Hughes case, 339 U. S. at pp.

The Hughes, Hanke and Gazzam cases were decided by the Supreme Court of the United States after the picketing in the instant case had been preliminary enjoined. Therein the Court held that the Fourteenth Amendment did not bar a state from the use of injunction to prohibit picketing as, in the Hughes case, of a store solely in order to secure compliance with a demand that the store's employees he in proportion to the racial origin of its then customers, or as in the Hanke case, of a business conducted by the owner himself without employees in order to secure compliance by him with a demand to become a union shop, or, as in the Gazzam case, for the purpose of compelling the employer to coerce his employees choice of a bargaining representative. The facts of the Wilbank and Phillips cases, decided by the Supreme Court of this state prior to the issuance of the preliminary injunction in the instant case, are somewhat similar to the facts of the Gazzam case.

Adjudication-Discussion

464-5, wherein Mr. Justice Frankfurter, speaking for the United States Supreme Court, among other things, said:

"The domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states,' Palko v. Connecticut, 302 U. S. 319, 327, no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing 'is more than fret speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.' Mr. Justice Douglas, joined by Black and Murphy, JJ., concurring in Bakery & Pastry Drivers & Helpers Local v. Wohl, 315 U. S. 769, 775, 776. Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences,\ and it produces consequences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word.

Further, in the Hughes case, 339 U.S. at pp. 465-6, Mr. Justice Frankfurter said:

element of communication picketing under some circumstances finds sanction in the Fourteenth Amendment. Thornhill v. Alabama, 310 U. S. 88; American Federation of Labor v. Swing, 312 U. S.

Wohl, 315 U. S. 769; Cafeteria Employees Union v. Angelos, 320 U. S. 293. However general or loose the language of opinions, the specific situations have controlled decision. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance. (citing authorities). 'A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual.' Bakery & Pastry-Drivers & Helpers Local v. Wohl, supra at 775."

To the same effect see also the Gazzam case, 339 U.S. at p. 537, wherein it was said:

". But since picketing is more than speech and establishes a locus in quo that has far more potential for inducing action or nonaction than the message the pickets convey, this Court has not hestitated to uphold a state's restraint of acts and conduct which are an abuse of the right to picket rather than a means of peaceful and truthful publicity. "."

The Wilbank and Phillips cases, supra, also hold that free speech is not involved where the labor objective of the picketing is unlawful. In each of these cases a union picketed an employer's place of business. The picketing was peaceful. However, its purpose was to force the employer to compel his employees to join a certain union or to discharge them and employ others who were members thereof. Such purpose was held to be unlawful and subject to restraint. These cases are, further, and

thority for the proposition that coercion is not necessarily limited to threats of violence to a person but may be quite as effective by causing him substantial business losses, and that restraint of unlawful picketing is within the general equity jurisdiction of a state court unrestricted by either the Pennsylvania Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, as amended, (43 PS §206a et seq.), or by the Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168, as amended (43 PS \$211.1 et seq.).10 Otherwise, such conduct on the part of a Union would be entirely ungoverned because picketing for an unlawful purpose is not an unfair labor practice under the Pennsylvania Labor Relations Act and the State Labor Relations Board has no power to take action to enjoin it: Pennsylvania Labor Relations Board v. Chester and Delaware Counties Bartenders, Hotel & Restaurant Employes Union, et al., 361 Pa. 246, (1949), and, as we have heretofore found, neither has the NLRB jurisdiction over the instant controversy.

The Union does not take issue with the Wilbank and Phillips cases. It contends, however, that they are not here controlling because plaintiffs therein were not engaged in interstate commerce and, further, because the peaceful picketing in the case at bar was solely for

[&]quot;Section 4 of the Pennsylvania Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, as amended by the Act of June 9, 1939, P. L. 302 (43 PS 206d), provides that the prohibition against injunction shall not apply in any case " "

[&]quot;(b) Where a majority of the employes have not joined a labor organization, or where two or more labor organizations are competing for membership of the employes, and any labor organization or any of its officers, agents, representatives, employes, or members engages in a course of conduct intended or calculated to coerce an employer to compel or require his employes to prefer or become members of or otherwise join any labor organization."

organizational and advertising purposes and the Union did not at any time, as in the two aforesaid cases, picket an employer's place of business for the purpose of requiring him to force his employees to join a particular union or, if they refused so to do, to discharge them and employ others who were members thereof. We cannot accept this contention. Under the facts as we have found them, the picketing was, in our opinion, cleverly designed by the Union to force an employer to commit an unlawful act, and at the same time attempt to hy-pass or avoid the legal pitfalls into which other labor organizations had theretofore fallen.

Central's operations at its Reading pick-up and delivery terminal were peculiarly vulnerable to picketing because the great bulk of the business there transacted by it was with unionized trucking concerns.

The Union laid its plans accordingly. Ite did not personally contact either Central or its twenty unorganized employees. It did not ask Central to arrange a meeting with these employees, a request which Central at all times would have granted. It did not picket and in fact disclaimed any desire to picket Central's main office to which all the employees came at least weekly. On the contrary, the Union sent letters to

[&]quot;Section 5 of the Pennsylvania Labor Relations Act of June 1, 1937.
P. L. 1168, (43 PS 211.5), provides:

[&]quot;Employes shall have the right to self-organization, to form, join or assist labor organizations."

Section 6 of the said Act, as amended by the Act of July 7, 1947, P. L. 1445, (43 PS Pocket Parts 211.6) provides:

[&]quot;(1) It shall be an unfair labor practice for an employer—
"(a) To interfere with, restrain or coerce employes in the
exercise of the rights guaranteed in this act.

[&]quot;(c) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization:

neighboring affiliates advising them that there was no strike at Central but that, in connection with an organizational campaign, it intended to picket Central's Reading terminal and, further, therein requesting these affiliates to act so that no one might misconstrue the Union's objects or purposes. Thereupon, the Union placed two pickets at the entrance to the terminal carrying signs bearing the legend "Local 776 Teamsters Union (A. F. of L.) wants Employees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions." Within two days thereafter and until the picketing was temporarily enjoined by this Court, Central's business at its Reading terminal fell off 95% with a resulting loss to it of \$400.00 to \$500.00 per day. The effect of this picketing fully justifies the observations made by the United States Supreme Courf in the Hughes case, supra, that industrial picketing is more than free speech and that the loyalties and responses exacted by picket lines are unlike those flowing from the printed word and produce consequences different from other modes of communication.

The right to carry on business be it called liberty or property has value and to interfere with this right without just cause is unlawful: Dorchy v. Kansas, 272 U. S. 306, 47 S. Ct. 86, (1926). A state is not required to tolerate in all places and under all circumstances even peaceful picketing by an individual if the purpose which it seeks to effectuate gives ground for its disallowance: Hughes case, supra. The business agents of the Union were fully aware of the financial burdens being placed upon Central as a result of the picketing here in question, and were fully cognizant of the consequences attendant thereto. We cannot conceive that, under the cloak of free speech, any labor organization has the right to engage in conduct designed to disrupt

Adjudication-Conclusions of Law

and destroy an employer's business, in an effort to compel him to abide by union policy rather than by the declared policy of the state and federal governments. Looking through form to substance, that is precisely what the Union did.

We believe, upon application of the law to the facts as we have found them, that the acts and conduct of the Union were an abuse of the right to picket rather than a means of peaceful and truthful publicity: that the Union, in picketing Central's Reading terminal, deliberately stepped over the line from persuasion to coercion in an attempt to compel Central to force its unorganized employees to join the Union; and that, therefore, the picketing was for an unlawful purpose and subject to restraint by this Court. It must be understood, however, that our conclusions are predicated primarily upon the finding that Central's business at its terminal-almost exclusively carried on with unionized trucking firms-was completely at the mercy of a picket. Therefore, our conclusions are not to be construed as otherwise limiting in any respect the right of a labor union, under other conditions and circumstances, to peacefully picket an employer's place of business for purely organisational purposes. The peculiar facts underlying each controversy must control decision.

In view of the foregoing, we state the following

Conclusions of Law

- 1. Peaceful picketing, although a right which generally speaking is constitutionally guaranteed as one of free speech, is not necessarily and under all circumstances lawful.
 - 2. Free speech is not involved where the labor ob-

Adjudication—Conclusions of Law

jective is illegal and under such circumstances picketing may properly be enjoined.

- 3. Coercion is not necessarily limited to threats of violence to a person or his property but may be quite as effective by causing him substantial business losses.
 - 4. The picketing here in question deliberately stepped over the line from legitimate persuasion for organizational purposes to coercion exerted on plaintiffs to force them to compel their employes to join the defendant Union or otherwise sustain substantial business losses.
 - 5. The picketing by defendant Union of plaintiffs' Reading pick-up and delivery terminal was for an unlawful purpose.
 - 6. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal is not an unwarranted encroachment upon rights protected from state abridgement by the Fourteenth Amendment to the Constitution of the United States.
 - 7. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal does not abridge, deny, or contravene any rights guaranteed to them under the Constitution of the Commonwealth of Pennsylvania.
 - 8. Although certain of the plaintiffs' activities are in interstate commerce the National Labor Relations Board does not have jurisdiction over the activities of the defendants here in question.
 - 9. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal at 9th and Market Streets, Harris-

Adjudication—Conclusions of Law Decree Nisi

burg, Pa., is within the general equity jurisdiction of this Court unrestricted by either the Labor Anti-Injunction Act of 1937, P. L. 1198, as amended in 1939, P. L. 302, or by the Pennsylvania Labor Relations Act of 1937, P. L. 1168, as amended in 1947, P. L. 1445.

Decree Nisi

AND NOW, September 4, 1951, upon consideration of the foregoing case, it is ordered, adjudged and decreed that defendants, Teamsters Chauffeurs and Helpers Local Union No. 776 (AFL), Ed Long, President, Allen Kline, business manager, its other officers and agents, and each of them, be and they are enjoined and restrained from picketing or patrolling, either with or without the use of signs, plaintiffs' Reading pick-up and delivery terminal located in the vicinity of 9th and Market Streets, Harrisburg, Pa. and all entrances leading thereto. The Prothonotary is directed to enter this decree nisi and forthwith give notice thereof to all parties of record or their counsel. If no exceptions are filed thereto within ten (10) days after the entry of this decree, a final decree will be entered; costs to be paid by defendants.

> /s/ PAUL G. SMITH, Chancellor.

XII

DEFENDANTS' EXCEPTIONS TO ADJUDICA-TION INCLUDING FINDING OF FACT, DISCUS-BION, CONCLUSIONS OF LAW AND DECREEE NISI

And Now, September 14, 1951, the Defendants except to the adjudication, findings of fact, discussion, conclusions of law, and decree nisi entered in the above-stated case on September 4, 1941, by the Honorable Paul G. Smith, Chancellor, as follows:

- 1. The Defendants except to the Courts' finding of fact numbered 9, which is as follows:
 - "9. During the time Central has been in business it never has had any controversy or labor dispute with its employees or any of them with respect to wages, hours or working conditions."
- 2. The Defendants except to the Courts' finding of fact numbered 11, which is as follows:
 - "11. During the many years Central has been in business it has never in any way, directly or indirectly, put pressure on its employees to join or refrain from joining a labor organization or to engage or refrain from engaging in concerted activities for the purpose of collective bargaining."
 - 3. The Defendants except to the Court's finding of fact numbered, 12, which is as follows:

"12. Central has never objected to and pres-

ently has no objections to any of its employed joining the Union."

The defendants except to the Courts' finding at fact, numbered 14, which is as follows:

"14. The wages paid by Central to its enployees are above the union scale for this area."

5. The Defendants except to the Courts' finding of fact numbered 18, which is as follows:

"18. At the time the Union placed the pickets there was no labor dispute between Central and its employees, none of whom were on strike."

6. The Defendants except to the Courts' finding of fact numbered 24, which is as follows:

"24. From the beginning of the picketing by the Union on June 7, 1949, or from the day there after, to the time the Court preliminarily enjoined the same on June 17, 1949, Central's Reading pick-up and delivery terminal did practically no business with unionized establishments such as the Reading Transportation Company, Shirk's Mean Express, West Shore Motor Express, Lancaster Transportation Company, Hartman's Transportation Company, Horn's Motor Express, Daily Motor Express and other interchange carriers, the track operators of which refused to cross the picket line."

7. The Defendants except to the Courts' finding of fact numbered 25, which is as follows:

. "25 During the period of the picketing the business of Central at its Reading pick-up and delivery terminal fell off 95%, or approximately

250,000 lbs. of freight daily, with a resulting loss to it of between \$400.00 and \$500.00 per day."

- 8. The Defendants except to the Courts' finding of fact numbered 34, which is as follows:
 - "34. Central's operations at its Reading pick-up and delivery terminal were unique in that the great bulk of the business there translicted by it was with unionized trucking concerns."
- 2. The Defendants except to the Courts' finding of fact numbered 35, which is as follows:
 - "35. The Union knew that, if the employees of unionized trucking concerns doing business at said terminal refused to pass a picket placed at the entrance thereto, Central would sustain large financial losses and its business thereat would be rained with ultimate loss of its terminal rights."
- 10. The Defendants except to the Courts' finding of fact numbered 36 which is as follows:
 - "36. If the picketing had not been enjoined, Central would have lost not only its contract with the Reading Transportation Company but also its terminal facilities with the Reading Railroad Company."
- 11. The Defendants except to the Courts' finding of fact, numbered 37, which is as follows:
 - "37. Central's business is highly competitive and, by reason of the picketing, Central lost not only the good will of certain of its customers built up during many years but also business which has gone to its competitors who operate in the same locality."

- 12. The Defendants except to the Courts' finding of fact numbered 38, which is as follows:
 - "38. The officers of the Union knew that each day the picketing herein question continued Central would sustain substantial business losses."
- 13. The Defendants except to the Courts' finding of fact numbered 39, which is as follows:
 - "39. The acts and conduct of the Union were an abuse of the right to picket rather than a means of peaceful and truthful publicity."
- 14.' The Defendants except to the Courts' finding of fact, numbered 40, which is as follows:
 - "40. The Union, its officers and agents, carried the picketing here in question beyond the field of persuasion for organisational purposes into the field of intimidation or business compulsion deliberately designed to coerce Central, by causing it substantial business losses, to compel or require its employees to become members of the Union."
- 15. The Defendants except to the Courts' refusal of the Defendants' request for finding of fact numbered? which is as follows:
 - "7. The Union placed the pickets at Central's place of business at the Rear of the Reading Railroad at 9th and Market Streets because that is the place where all the drivers go; it is listed in the telephone directory as the company's terminal and the Union did not want to create the impression that it was including the organization of office workers. Furthermore, said terminal is a place of employment of Central."

16. The Defendants except to the Courts' refusal of the Defendants' request for finding of fact numbered 18, which is as follows:

"13. Following the commencement of the picketing on June 7, 1949, some truck drivers of other trucking companies continued to deliver and pick up freight at Central's terminal and others retrained from passing the picket. Reading Transportation Company delivered two truckloads to Central on June 8, and then advised him that no more shipments would come in thereafter; one driver for Shirk's Motor Express made deliveries thereafter; Lancaster Transportation Company came in regularly thereafter; Eastern Motor Express made a few deliveries during the picketing, Hartman's Transportation Co., and Daily Motor Express each made a delivery on June 8."

17. The Defendants except to the Courts' refusal of the Defendants' request for finding of fact numbered 14, which is as follows:

"14. The companies and drivers of freight trucks that refrained from picking up and delivering freight at Central's terminal after the picketing commenced on June 7, were prompted so to do for various reasons, as follows: R. G. Mowery of West Shore Express told the drivers, who were Union members, that it was up to them, and they decided not to go through; Bowman, terminal manager of Hartman's inquired of Kline whether or not their drivers went in, and Kline advised Bowman it was up to him whether or not men went in, but that he expected him to cooperate; Boyer, a driver for Reading Transportation Cox, saw a

picket and didn't deliver; Gardner, stayed out because his company, Shirk's Motor Express told him to stay out; Heisler, a driver for Shirk's and Snyder a driver for Daily Motor Express, acting on their own initiative and will didn't go in because they wouldn't pass a picket line; Gitt, another driver for Daily Motor Express didn't go in because "the other guy didn't go in . . ."

- 18. The Defendants except to the Courts' refusal of part of the Defendants' request for finding of fact numbered 15, which is as follows:
 - "15. The Union did not instruct other unionized trucking companies to refrain from delivering or picking up at Central's terminal."
- 19. The Defendants except to the Courts' refusal of the Defendants' request for finding of fact numbered 16, which is as follows:
 - "16. The sole purpose of the picketing is to advertise to the employees of Central to join the Union for union wages, hours, and working conditions."
- 20. The Defendants' except to the Courts' refusal of the Defendants' request for finding of fact numbered 20, which is as follows:
 - "20. The Union employed the picketing methodto advertise its organizational campaign among the employees of Central because Kine attempted to talk to Garner in 1939 about organizing said employees and Garner ordered him off Central's premises; Kline contacted employees of Central at other trucking terminals and on the street, and

they were afraid to talk to him; the Union had neither funds or time to contact the men at their homes; and, the Union felt it would be embarrassing to the employes to conduct a home-to-home solicitation."

- 21. The Defendants except to the Courts' refusal of the Defendants' request for finding of fact numbered 22, which is as follows:
 - "2 On June 10, 1941, Central filed a charge against the Union, alleging, as unfair labor practices, substantially the same matters as are set forth in the Bill of Complaint in these proceedings, with the Pennsylvania State Labor Relations Board, wherein it sought the same remedy as it seeks in these proceedings."
- 22. The Defendants except to any and all parts or portions of the Adjudication of the Court insofar as it applies or depends upon the principles enunciated in the case of International Union, United Automobile Workers v. Wisconsin Board, 336 U.S. 243, 69 S. Ct. 516. (1949) which Defendants assert are not applicable to the instant case.
- 23. The Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion, as follows:
 - ". . . In the case at bar, however, we have no conflict between the Taft-Hartley Act, and any act of this state . . ."
- 24. The Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion as follows:

". The sole question here is whether, by reason of the provisions of the Tuft-Hartley Act, this Court in the exercise of its general equity jurisdiction no longer has the power to restrain, at the instance of a private individual and under the facts as we have found them, peaceful picketing, allegedly for organizational purposes or whether such individual must seek such relief through the NLRB. Neither our Supreme Court, nor the United States Supreme Court appear to have directly passed upon this question. And, until one of these Courts does, we are constrained, for the reasons hereinafter set forth, to hold that this Court has jurisdiction."

25. The Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion, as follows:

"... since the Union's organizational picketing was peaceful... such picketing was not an unfair labor practice within the meaning of section 8 (b) (1) (A) ... and since the Union at no time ... made demands on Central to recognize it for the purpose of collective bargaining ... the Union was not guilty of any unfair labor practice within the meaning of section 8 (b) (1) (B). Neither can we find that the Union was guilty of any unfair labor practices as specified in sections 8 (b) (4) (A) or (B)."

26. Defendants except to the Adjudication of the Court insofar as it fails to give any consideration, and the Discussion omits any reference to the proposition that the Union, if it picketed for the purposes as set

forth in the findings of fact, and Discussion, engaged in unfair labor practices prescribed by section 8 (b) (2) of the Labor-Management Relations Act of 1947, (29 U.S.C.A. Pocket Parts Sec. 158).

- 27. Defendants except to the Adjudication of the Court insofar as it fails to hold that the court was without jurisdiction to enoin Defendants in this case because they were engaged in activities and were exercising rights protected and guaranteed by Section 7 of the Labor-Management Relations Act of 1947, supra.
- 28. Defendants except to the Adjudication of the Court, insofar as it depends upon the proposition set

"Upon application of the principles laid down in the Briggs-Stratton case, we are of the opinion that the factual situation now before us falls within the area designedly left open by Section 7 of the Taft-Hartley Act to state control."

- 29. Defendants except to the Adjudication of the Court insofar as it depends upon the decision of the Supreme Court of Missouri in the case of Kincaid-Webber Motor Company v. Quinn, et. al., for authority and as precedent.
- 30. Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion as follows:

"In the instant case there is no labor dispute between Central and its employees, none of whom are on strike. Neither Central nor the Union in way attempted to restrain or coerce these employees in their right to self-organization guaranteed by Section 7 . . ."

31. Defendants except to the Adjudication of the Court insofar as it depends upon the proposition that the cases of:

Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees of America, Dis. 998, et. al. v. Wisconsin Employment Relations Board, 340 U.S. 383, 71 S. Ct. 359 (1951).

International Union of United Auto Workers v. O'Brien, 339 U.S. 454, 70 S. Ct. 781 (1950)

Gerry of California v. Superior Court, 194 P 2d 689 (1948)

Ex Parte DeSilva, 199 P2d 6. (1948)

Pocahontas Terminal Corporation v. Portland Building & Construction Trade Council et. al., 93 F. Supp. 217

Norris Grain Co. v. Nordaas, 46 N.W. 2d, 94 (1950)

Goodwins, Inc., v. Hagedorn, et. al. (N. Y. App. Div.) 19 C.C.H. Labor Cases, par 66, 272; 20 C.C.H. Labor cases, par. 66, 409.

are not applicable and controlling in the instant case.

- 32. Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the discussion, as follows:
 - ". . . These cases (Hughes et. al. v. Superior Court of California, 339, U. S. 460, 70 S Ct., 718; International Brotherhood of Teamsters et. al. v. Hanke, et. al., 339, U. S. 470, 70 S. Ct. 773; Building Service Employees, et. al., v. Gazzam, 339 U. S. 532, 70 S. Ct. 784; Wilbank et. ux. v. Chester and

Delaware Counties Bartenders, etc., et. al. 360 Pa. 48, cert. den. 336 U. S. 945, 69 S. Ct. 812; Phillips et. al. v. United Brotherhood etc., et. al., 362 Pa. 78) are, further, authority for the proposition that coercion is not necessarily limited to threats of violence to a person but may be quite as effective by causing him substantial business losses, and that restraint of unlawful picketing is within the general equity jurisdiction of a state court unrestricted by the Pennsylvania Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, as amended, or by the Pennsylvania Labor Relations Act of June 1, 1937; P. L. 1168, as amended . . . Otherwise, such conduct on the part of a Union would be entirely ungoverned because picketing for an unlawful purpose is not an unfair labor practice under the Pennsylvania Labor Relations Act . . . and, as we have heretofore found, neither has the NLRB jurisdiction over the instant controversy."

- 33. Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion, as follows:
 - "... Under the facts as we have found them, the picketing was, in our opinion, cleverly designed by the Union to force an employer to commit an unlawful act, and at the same time, attempt to by-pass or avoid the legal pitfalls into which other labor organizations had heretofore fallen."
- 34. Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion, as follows:
 - ". . . We cannot conceive that, under the cloak

of free speech, any labor organization has the right to engage in conduct designed to disrupt and destroy an employer's business, in an effort to compel him to abide by union policy rather than by the declared policy of the state and federal governments. Looking through form to substance, that is precisely what the Union did."

35. Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion, as follows:

"We believe, upon application of the law to the facts as we have found them, thut the acts and conduct of the Union were an abuse of the light to picket rather than a means of peaceful and truthful publicity; that the Union, in picketing Central's Reading terminal, deliberately stepped over the line from persuasion to coercion in an attempt to compel Central to force its unorganized employees to join the Union; and that, therefore, the picketing was for an unlawful purpose, and subject to restraint by this Court ..."

- 36. The Defendants except to the Courts conclusion of law numbered 3, which is as follows:
 - "3. Coercion is not necessarily limited to threats of violence to a person or his property but may be quite as effective by causing him substantial business losses."
- 37. The Defendants except to the Courts conclusion of law numbered 4, which is as follows:
 - "4. The vicketing here in question deliberately stepped over the line from legitimate persuasion

for organizational purposes to coercion exerted on plaintiffs to force them to compel their employes to join the defendant Union or otherwise sustain substantial business losses."

- 38. The Defendants except to the Courts conclusion of law numbered 5, which is as follows:
 - "5. The picketing by defendant Union of plaintiffs' Rending pick-up and delivery terminal was for an unlawful purpose."
- 39. The Defendants except to the Courts conclusion of law numbered 6, which is as follows:
 - 6. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal is not an unwarranted encroachment upon rights protected from state abridgment by the Fourteenth Amendment to the Constitution of the United States."
- 40. The Defendants except to the Courts conclusion of law numbered 7, which is as follows:
 - "7. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal does not abridge, deny, or contravene any rights guaranteed to them under the Constitution of the Componwealth of Pennsylvania."
- 41. The Defendants except to the Courts' conclusion of law numbered 8, which is as follows:
 - "S. Although certain of the plaintiffs' activities are in interstate commerce, the National Labor Relations Board does not have jurisdiction over the activities of the defendants herein question."

- 42. The Defendants except to the Courts' conclusion of law numbered 9, which is as follows:
 - "9. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal at 9th and Market Streets, Harrisburg, Pa., is within the general equity jurisdiction of this Court unrestricted by either the Labor Anti-Injunction Act of 1937, P. L. 1198, as amended in 1939, P. L. 302, or by the Pennsylvania Labor Relations Act of 1937, P. L. 1168, as amended in 1947, P. L. 1445."
- 43. The Defendants except to the Courts' refusal to make a conclusion of law to the effect that the Congress of the United States had pre-empted jurisdiction over the subject-matter of these proceedings by the enactment of the National Labor Relations Act of 1935 (Wagner Act) as amended by the Labor Management Relations Act of 1947 (Taft-Hartley Act), and that the National Labor Relations Board has exclusive primary jurisdiction over the subject-matter herein.
- 44. The Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 1, as follows:
 - "1. This case involves or grows out of a labor dispute within the purview of Section 3 (a) of the Pennsylvania Dabor, Anti-Injunction Act of 1937, P. L. 1198."
- 45. The Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 2, as follows:
 - "2. A labor dispute within the meaning of the

term as provided in Section 3 (c) of the Pennsylvania Labor Anti-Injunction Act of 1937, P. L. 1198, exists between the parties to this action."

- 46. The Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 3, as follows:
 - "3, The defendants in this action are persons participating or interested in a labor dispute within the scope of Section 3 (b) of the Pennsylvania Labor Anti-Injunction Act of 1937, P. L. 1198."
- 47. The Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 4, as follows:
 - "A The exceptions to the Pennsylvania Labor Anti-Injunction Act of 1937, P. L. 1198, which are embodied in the amendments to Section 4 thereof, enacted June 9, 1939, P. L. 302, are not applicable to this case.
- 48. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 5, as follows:
 - "5. The Plaintiff has failed to allege and prove the statutory prerequisites for the relief prayed for which are set forth in Section 9 and 11 of the Pennsylvania Labor Anti-Injunction Acts of 1937 P. L. 1198."
- 49. Defendants except to the Courts' refusal of the o Defendants request for conclusion of law numbered 6, as follows:
 - "h The court is without power to grant the

relief prayed for because such would contravene Section 6 of the Pennsylvania Labor Anti-Injunction Act of 1937 P. L. 1198."

- 50. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 7, as follows:
 - "7. The plaintiff's business involves and it is engaged in interstate commerce thereby subjecting the controversy to the exclusive jurisdiction of the National Labor Relations Board pursuant to the provisions of the National Labor Relations Act of 1947."
- 51. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 8, as follows:
 - "8. A court order granting the relief prayed for by Plaintiff in these proceedings impairs the rights to self-organization guaranteed by Section 7 of the National Labor Relations Act of 1947."
- 52. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 9, as follows:
 - "9. The rights guaranteed by Section 7 of the National Labor Relations Act of 1947 are paramount over the right of the Plaintiff to control the use of its property, where the two rights conflict."
- 53. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 11, as follows:
 - "11. Defendants' right to picket under the cir-

cumstances of this case is included in the right of freedom of speech guaranteed by the First Amendment to the United States Constitution and the 7th-Section of Article 1 of the Constitution of Pennsylvania."

- 54. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 12, as follows:
- "12. Defendants' right to picket under the circumstances of this case is included in the right to peaceably assemble guaranteed by the First Amendment to the United States Constitution and the 20th Section of Article 1 of the Constitution of Pennsylvania."
- 55. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 13, as follows:
 - "13. Defendants' right to picket under the circumstances of this case is guaranteed by the privileges and immunities provision of the Fourteenth Amendment to the United States Constitution."
- 56. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 14, as follows:
 - "11. Defendants' right to picket under the circumstances in this case is a fundamental right and liberty secured from abridgment by the state by the Fourteenth Amendment to the United States Constitution."
- 57. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 15, as follows:

"15. Defendants' right to picket under the circumstances in this case is secured to them by the provisions of the Fourteenth Amendment to the United States Constitution assuring defendants the equal protection of the laws."

58. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 16, as follows:

"16. Defendants' right to picket under the circumstances in this case is secured to them by the inherent and indefeasible rights guaranteed by the 1st Section of Article 1 of the Constitution of Pennsylvania."

59. The Defendants except to the Decree Nisi, entered by the Court in these proceedings, and which is as follows:

"Decree Nisi

"AND NOW, September 4, 1951, upon consideration of the foregoing case, it is ordered, adjudged and decreed that defendants, Teamsters Chauffeurs and Helpers Local Union No. 776 (AFL), Ed Long, President, Allen Kline, Business Manager, its other officers and agents, and each of them, be and they are enjoined and restrained from picketing of patrolling, either with or without the use of signs plaintiffs' Reading pick-up and delivery terminal located in the vicinity of 9th and Market Streets, Harrisburg, Pa., and all entrances leading thereto. The Prothonotary is directed to enter this decree visi and forthwith give notice thereof to all parties of record or their counsel. If no exceptions are filed thereto within ten (10) days after the entry

Defendants' Exceptions to Adjudication and Decree Nisi Opinion and Final Decree

of this decree, a final decree will be entered; costs to be paid by defendants."

DOUGLASS, HANDLER, ROSENBERG & WARE

/8/ By SIDNEY G. HANDLER,

Attorney for Defendants.

XIII

OPINION AND FINAL DECREE

OPINION

BY THE COURT:

The defendants (hereinafter called the "Union") filed 59 exceptions to the adjudication, findings of fact, discussion, conclusions of law and decree nisi entered September 4, 1951 by the Chancellor in the above captioned case.

Under the decree nisi the Union was enjoined and restrained from picketing a pick-up and delivery terminal operated by plaintiffs at the rear of the Reading Railroad Freight Station at 9th and Market Streets, Harrisburg, Pa.

The sole issues raised by plaintiffs' bill and the Union's answer and motion to dismiss filed thereto were whether the picketing by the Union, although at all times peaceful and allegedly for organizational purposes, was a lawful exercise of the constitutional guaranty of free speech, or whether said picketing was in furtherance of an unlawful purpose and, therefore, subject to re-

straint by this Court under its general equit, jurisdiction unrestricted by the Pennsylvania Labor Anti-Injunction Act of 1937, as amended.

After a full hearing duly held on these issues, a preliminary injunction was issued, as prayed for by plaintiffs, restraining the aforesaid picketing.

Thereafter, the Union, without amending its answer, for the first time contended that Congress had vested in the National Labor Relations Board exclusive jurisdiction to investigate, approve or take action to forbid the conduct of the Union here in question, and that, therefore, this Court had no jurisdiction to act in the matter and was required to dissolve the preliminary injunction then outstanding and dismiss the bill.

Further hearings were held and, after the close of thetrial and the filing of requests by both parties for findings of fact and conclusions of law, the Chancellor made his adjudication wherein, inter alia, he sustained the jurisdiction of this Court and entered the decree nist hereinbefore referred to.

Certain of the controlling facts as found by the Chancellor are as follows:

Plaintiffs are engaged in the trucking and storage business with principal office at 11th and State Streets, Harrisburg, Pa. Since 1931 they have also operated a local freight pick-up and delivery service for the Reading Railroad Company, for its trucking division, the Reading Transportation Company, and for approximately fifteen other trucking concerns. This business is conducted by them from terminal and platform facilities located at the rear of the Reading Freight Station, 9th and Market Streets, Harrisburg, Pa. Therein plaintiffs employ twenty-four persons as truckers, helpers

and platform men, four of whom are members of the defendant Union.

On June 7, 1949, without any notice whatsoever to the plaintiffs or their employees, rotating pickets, two at a time, none of whom were employees of plaintiffs, were placed by the defendant Union, one in front of plaintiffs' Reading loading platform and the other at the entrance thereto, carrying signs bearing the legend "Local 776 Teamsters Union (A. F. of L.) wants Employees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions." This picketing, at all times conducted in an orderly manner, continued until preliminarily enjoined on June 17, 1949. Prior to and during the time of the picketing, there was no labor dispute between plaintiffs and their employees, none of whom were out on strike.

Plaintiffs' operations at their picke-up and delivery terminal were unique in that the great bulk of the business there transacted by them was, as the defendant Union well knew, with unionized trucking concerns. During the period of the picketing, plaintiffs' business at this terminal fell off 95%, or approximately 250,000 lbs. of freight daily, with a resulting loss to them of \$400.00 to \$500.00 per day, and this because practically all the teamster members of the defendant Union and of the neighboring union affiliates refused to drive their trucks past the pickets or to load or unload freight at the terminal. The officers of the defendant Union knew that each day the pickets were stationed at their terminal plaintiffs would sustain substantial business losses, and also that, if the picketing continued for any length of time, plaintiffs would lose not only their contract with the Reading Transportation Company but also their terminal facilities with the Reading Railroad Company.

Opinion and Final Decree

In view of the foregoing and other findings not here repeated, the Chancellor, further, found that the acts and conduct of the Union was an abuse of the right to picket rather than a means of peaceful and truthful publicity and that the Union, its officers and agents, carried the picketing here in question beyond the field of persuasion for organizational purposes into the field of intimidation or business compulsion deliberately designed to coerce plaintiffs, by causing them substantial business losses, to compel or require their employers to become members of the Union.

Thereupon, the Chancellor in his adjudication, made the following conclusions of law:

- "1. Peaceful picketing, although a right which generally speaking is constitutionally guaranteed as one of free speech, is not necessarily and under all circumstances lawful.
- "2. Free speech is not involved where the labor objective is illegal and under such circumstances picketing may properly be enjoined.
- "3. Coercion is not necessarily limited to threats of violence to a person or his property but may be quite as effective by causing him substantial business losses.
- stepped over the line from legitimate persuasion for organizational purposes to coercion exerted on plaintiffs to force them to compel their employes to join the defendant Union or otherwise sustain substantial business losses.
 - "5. The picketing by defendant Union of plaintiffs' Reading pick-up and delivery terminal was for an unlawful purpose.

- "6. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal is not an unwarranted encroachment upon rights protected from state abridgement by the Fourteenth Amendment to the Constitution of the United States.
- "7. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal does not abridge, deny, or contravene any rights guaranteed to them under the Constitution of the Commonwealth of Pennsylvania.
- "8. Although certain of the plaintiffs' activities are in interstate commerce the National Labor Relations Board does not have jurisdiction over the activities of the defendants here in question.
- "9. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal at 5th and Market Streets, Harrisburg, Pa., is within the general equity jurisdiction of this Court unrestricted by either the Labor Anti-Injunction Act of 1937, P. L. 1198, as amended in 1939, P. L. 302, or by the Pennsylvania Labor Relations Act of 1937, P. L. 1168, as amended in 1947, P. L. 1445."

and entered the decree nisi restraining the picketing in question.

Exceptions Nos. 1 to 14, inclusive, filed by the Union, question certain findings of fact made by the Chancellor. None of these exceptions raise any matters not theretofore considered in the adjudication and no further consideration thereof is here required. Exceptions Nos. 15 to 21, inclusive, complain that the Chan-

cellor did not make certain findings of fact in accordance with the Union's request. None of these exceptions aver, however, that the Chancellor failed to make substantial disposition thereof. Therefore, under Equity Rule 71, we are not here required to specifically answer them: Beck v. O'Loughlin et al., 87 Pittsburgh Legal Journal 150 (1939); Strosser v. Strosser, 49 Lanc. L. Rev. 143 (1944); Bushong et al. v. Ashton (No. 2), 51 Lanc. L. Rev. 161 (1948); Bechtold et al. v. Coleman Realty Company et al., 52 Lanc. L. Rev. 141 (1950); Dell et ux. v. Berks County Trust Company et al., 75 D. & C. 371 (1950). Exceptions Nos. 22 to 35, exclusive, question certain parts of the adjudication set forth in the Chancellor's discussion and in the failure therein to adopt the Union's theory of the case. However, since the function of the discussion in an equity adjudication is simply to indicate, for the assistance of the reviewing court, the reasons on which the decision vis based, no part thereof can be made the subject of exceptions: 8 Pa. Standard Practice, Section 367, p. 254; Campbell's Loose Leaf Annotated Current Service, Equity Rule 69, Annotation p. 1; J. P. Burns et al. v. Equipment Finance Inc., 57 Dauphin 319 (1946); Bushong et al. v. Ashton (No. 2), supra; Winger et al. v. Aires et al., 52 Lanc. L. Rev. 453 (1951). Exceptions No. 36 to 42, inclusive, question all but the first two conclusions of law made by the Chancellor. Exceptions Nos. 43 to 58, inclusive, question the action of the Chancellor in refusing to make certain conclusions of law as requested by the Union. Exception No./59 is to the decree nisi entered by the Chancellor.

On January 7, 1952, and subsequent to the filing of the Chancellor's adjudication, our State Supreme Court handed down an opinion in the case of Wortex Mills, Inc. v. Textile Workers Union of America, C. I. O., 369 Pa. 359, 85 A. 2d 851, affirming the action of the Court of Common Pleas No. 5 of Philadelphia County in restraining certain picketing. Therein, Mr. Justice Bell, speaking for the Court, in a full and most comprehensive opinion, considered all of the issues involved in the case at bar and in conclusion said, 369 Pa. at p. 369:

"Because several important Acts of Congress and State Statutes dealing with industrial relations and the rights of employees and employers are of such recent origin, the field of industrial relation-ship is not yet well marked nor its boundaries clearly defined. Nevertheless, the decisions up to this time may be thus summarized: A State Court may enjoin unlawful picketing or picketing which is conducted in an unlawful manner or for an unlawful purpose. Picketing, if peaceful, orderly and for a legitimate or lawful purpose, is legal and within the protection of the Constitution. However a State is not required to tolerate in all places and in all circumstances even peaceful picketing by an individual; it is well established that the method or conduct or purpose or objective of the picketing may make even peaceful picketing illegal."

After argument before the Court en banc, and upon application of the principles enunciated in the Wortex Mills case, we are of the opinion that none of the exceptions filed by the defendants now before us have any merit; that the findings of fact made by the Chancellor are supported by the record before us; that his conclusions of law are proper; and that all of the exceptions filed by the defendants to the adjudication should be dismissed and the decree nisi affirmed.

(6) 229) IN THE SUPREME COURT OF PENNSYLVANIA, MIDDLE District. Mar Tuese, 1952

No. 73

Docum Entres

JOSLEH GALBER and A. JOSEPH GARBER, trading as Central Sker-age & Crank er Company

TERRITORS, CHAUPPEUR & RECEPTER LOCAL UNION NO. 746 (AFL), Ed Long, President, Allen Kline, Business Manager, its other Officers and Agents, Appellants

Appeal from deares at No. 1884 Boulty Docket

LUNGROOM

David S. Kohn, McNess, Wallace & Norick James H.

Dougland, Handler, Rosenberg & Ware, Sidney G. Ban-

Appeal from Court of Common Pleas of the County of

Desphin.

**Rarch: 19, 1952 : Append filed. En die certiorari exit.

**The continue of the con

Returnable 21st Monday of the year, 1952. March 27, 1952: Notice of Appeal etc. filed.

May 6, 1952; Appearance entered for Appellee, McNees, Fallace & Nurick; James H. Booser.

May 22, 1962 Record received and filed.

May 28, 1962; Argued.
"Peb, 13, 1963; The decree is reversed at cost of appelion, and the bill is dismissed for want of jurisdiction.

Dissenting opinion filed by Bell, J. _____ Feb. 20, 1953: Petition for Reargament filed.

"March 24, 1958: Petities denied. Per curiam."
March 27, 1953: Remittitur exit, and with record sent to the Prothonotery of Dauphin County.

March 31, 1953: Praccipe as to what shall constitute record to the Supreme Court of the United States filed.

April 1, 1953: Acknowledgment of remitfitur and record received and filed.

[fol. 230] In the Supreme Count of Pennsylvania (Middle District)

No. 26

[Title omitted]

OPINION OF THE COURT-Filed February 13, 1953

Horace Stern, C. J.

Plaintiffs, Joseph Garner and A. Joseph Garner, trading as Central Storage and Transfer Company, are engaged in the trucking and storage business in Harrisburg. Their principal office there was at 11th and State Streets, but they maintained terminal and platform facilities at the rear of the Reading Railroad Preight Station at 9th and Market Streets, where they operated a local freight pick-up and delivery service for the Reading Railroad Company and its trucking division, the Reading Transportation Company, (with both of which it had contracts), as well as with some fifteen other trucking firms. Some of the freight handled by them is shipped on the Reading Railroad from points outside the State to consignees in Harrisburg. They employ 24 persons as trackers, helpers and platform men; only 4 of these are members of Teamsters, Chauffeurs and Helpers, Local Union No. 776 (A. F. L.), an uniucorporated labor organization the members of which are engaged as truck drivers and helpers in the same industry in which plaintiffs are also engaged. Plaintiffs have never objected, and do not presently object, to any of their employees joining the Union.

On June 7, 1949, rotating pickets, two at a time, none of whom was an employee of plaintiffs, were placed by the [fol. 231] Union, one in front of, and the other at the entrance to, plaintiffs' Reading loading platform; they earried signs bearing the following legend: "Local 776 Teamsters Union (A. F. of L.) want: Employees of Central Storage and Transfer Co. to join them to gain union wages, hours and working conditions." This picketing was conducted at all times in an orderly and peaceful manner. Neither then nor at any other time has there been any

controversy or labor dispute between plaintiffs and their suployees, none of whom were on strike. While the picketing continued union truck drivers and helpers employed by the Reading Transportation Company and other interchange carriers refused to cross the picket line; as the bulk of plaintiffs' operations was with unionized trucking concerns the consequence was that their local business fell off 95%, causing a loss to them of between \$400 and \$500 per day, in addition to which they stood to have their contract with the Reading Transportation Company cancelled and their terminal facilities with the Reading Railroad Company vacated.

Plaintiffs, on June 9, 1949, brought a bill in equity against the Union to enjoin the picketing, and, on June 17, 1949, the court, after hearing testimony offered by both parties, decreed that a preliminary injunction should issue as prayed for. Subsequently additional testimony was taken on final hearing, and, on September 4, 1951, the court entered a decree nisi enjoining and restraining defendants from picketing plaintiffs' Reading pick-up and delivery terminal; exceptions filed by defendant were dismissed, and a final decree was entered on March 3, 1952 in accordance with the decree nisi. From that final decree defendants now appeal.

It is defendants' contention that the picketing carried on by them was solely for organizational purposes, that is, to persuade plaintiffs' non-union employees to join the Union. If such was indeed the fact the picketing was constitutionally protected and should not have been enjoined (Carnegie-Illinois Steel Corporation v. United Steelworkers of America, 353 Pn. 420, 430, 431, 45 A. 2d 857, 861). But if, on the other hand, the primary or paramount object was to [fol. 232] coerce plaintiffs, the employers, to commit a violation of section 6(c) of the Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168 (which provides that "It shall be an unfair labor practice for an employer (e) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to enourage or discourage membership in any labor organization;") such picketing would have been, by the law of the State, for an unlawful purpose and, if the State court had

jurisdiction in spite of the act that plaintiffs were largely engaged in interstate commerce, it was proper to enjoin it: Wilbank v. Chester & Delaware Counties Bartenders, Hotel and Restourant Employees Union, 360 Pa. 48, 60 A. 2d 21 (cert. den. 336 U. S. 945); Philips v. United Brotherhood of Carpenters and Joiners of America, 362 Pa. 78, 66 A. 2d 227; Carpenters and Joiners Union of America, Local No. 213, v. Ritter's Gafe, 315 U. S. 722; Giboney v. Empire Starage & Ice Compani), 336 U. S. 490; Hughes v. Superior Court of California for Contra Casta County, 339 U. S. 460; International Brotherhood of Teamsters Union, Local 309, v. Hanke, 339 U. S. 470; Building Employees International Union, Local 362, v. Gassoin, 339 U. S. 532.

Consideration cannot be given here to the merits of the controversy if the State courts lack jurisdiction in view of the fact that the Labor Management Relations Act—the so-called Taft-Hartley Act—of 1947, c. 120, 61 Stat. 134, 29 U. S. C. A. (Pocket Part) 5141 et seq., also provides, 5101, amendatory section 8(a)(3), as does our State Act, that "It shall be an unfair labor practice for an employer by discrimination in regard to hire or tenure of em-

ployment or any term or condition of employment to encourage or discourage membership in any labor organiza-

section 8(b)(2), that "It shall be an unfair labor practice for a labor organization or its agents... to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section..." Thus it will be seen that the Act of Congress pro[fol. 233] hibits the same activity on the part of a labor organization in this respect as does the Pennsylvania Labor Relations Act, the only difference being that the Federal act would stamp this picketing as an unfair labor practice, whereas the State act does not so list it but our courts have declared it to be unlawful because aimed to coerce the employer into committing what the act does declare to be

The problem presented, therefore, is whether, under such circumstances, the Labor Management Relations Act constituted an absolute and complete preemption of the field so as to preclude State action, and the test of decision is the intention of Congress in that regard, that is, whether

an unfair labor practice on his part.

it has manifested a willingness that the States should exercise concurrent jurisdiction in such a case. There is n express provision in the Federal legislation directly Starmining the question; Congress did not see fit therein apressly to declare a general policy or to state specific ales as to their effects on state regulation of various places of labor relations over which the several states raditionally have exercised control: International Union, I. A. W. A., A. F. of L. Local 232 v. Wisconsin Employment Relations Board, 336 U. S. 245, 252. Therefore it has seen held by the Supreme Court of the United States that there are many phases of labor relations affecting intertate commerce in which the equity powers of the State remain intact. Thus the State is not excluded from exercising its police power, and therefore, if picketing is attended by violence and threatens personal injury or property damage to the employer or to employees desiring to work, a State agency may prohibit such picketing: Alien-Bradley Local No. 1311, United Electrical, Radio and Nachine Workers of America, v. Wisconsin Employment Relations Board, 315 U.S. 740. Where a union, in order to bring pressure on an employer, adopted a plan whereby union meetings of employees were called at irregular times during working hours, thereby causing a constant succes-[fol. 234] sion of work stoppages, it was held that neither the National Labor Relations Act—the so-called Wagner Ant-c 372, 49 Stat. 449, 29 U/S. C. A. § 151 et seq., nor the Labor Management Relations Act made any express delegation of power to the National Labor Relations Board to permit or forbid this particular union conduct from which in exclusion of state power could be implied: International Union, U. A. W. A., A. P. of L., Local 282, v. Wisconsin Employment Relations Board, 336 U. S. 245. Where an imployee was discharged by an employer for refusal to pay union dues, in violation of a State statute which forbade enforcement of a maintenance-of-membership elause | xcept under certain conditions not then fulfilled, it was held that the Labor Relations Board of the State could order the employer to cease and desist from giving effect to such clause, that such order was not in conflict with either the National Labor Relations Act or the Labor Management Relations Act, and that the ceftification of the union by

the National Board did not onat the jurisdiction of the State Board to prohibit practices forbidden by State law and not governed by Federal law: Algoma Plegoood-& Veneer Co. v. Wisconsin Employment Belations Board, 336 U.S. 301. Our own court has held that a union may be enjoined in our State courts from acting in disregard of a collective bargaining agreement, notwithstanding the prohibition by the so-called Norris-LaGnardia Act, c. 90, 47 Stat. 70, 29 U.S. C.A. § 101 et seq. of the issuance of injunctions in labor disputes except on certain conditions, and notwithstanding also the fact that the Labor Management Relations Act provided that suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting interstate commerce might be brought in any district court of the United States: General Building Contractors' Association v. Local Union

No. 542, 370 Pa. 73, 87 A. 2d 850.

On the other hand, it is equally well-settled that where there is actual conflict between the provisions of a State statute and the National Labor Relations Act in regard to regulation of labor union activities in an industry affecting interstate commerce, the State act must give way to the [fol. 235] Federal act: Hill v. Florido, 325 U. S. 538; International Union of United Automobile Workers of America, C. 1. O., v. O'Brien, 339 U. S. 454; Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America, Division 998, v. Wisconsin Employment Relations Board, 340 U.S. 383. Where a State Labor Relations Board undertook under a State act, to certify certain unions as collective bargaining representatives after the National Labor Relations Board had refused to certify such unions on the ground that to do so would obstruct the purposes of the National Labor Relations Act, it was held that such certification by the State Board was invalid as being in conflict with the Federal legislation, it being pointed out that two administrative bodies might produce a mischievous conflict if they attempted to exercise discretionary control over the same subject matter: Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U. S. 767. Even where the National Labor Relations Board had not already undertaken to determine the appropriate collective bargaining representative, it was held that the such representative and therefore that its attempted artification was invalid: Le Crosse Telephone Corporation & Wisconsin Employment Relations Board, 336 U. S. 18. Our Court has similarly held, in Pittsburgh Resilence Consess Substation Operators and Maintenance Employees' Case, 367 Pa. 379, 54 A. 2d 691, that in view of the National Labor Relations Act the Pennsylvania Labor Relations board did not have jurisdiction to entertain a petition to determine the collective bargaining agent for employees in an industry engaged in interstate commerce, even though the issue presented had not been before the National Board. And in Pennsylvania Labor Relations Board v. Frank, 362 Pa. 537, 67 A. 2d 78, where the Pennsylvania Labor Relations Roserd made an order on an employer to cease and desiet from engaging in an unfair labor practice, in that he had coerced and interfered with his employees in the exercise of their rights of self-organization and collective barries of their rights of the rights of the rights of the ri

In the light, then, of all these decisions, the question recurs whether Congress intended to exclude State action enjoining picketing which constituted an unfair labor practice on the part of a labor organization under the provisions of the Labor Management Relations Act, where such

picketing was unlawful also under the State law.

Turning to the National Labor Relations Act of 1935—the Wagner Act—it appears that by section 10(a) of that Act, 29 U.S. C. A. \$160(a) the National Labor Relations Board was empowered to prevent any person from engaging in any unfair labor practice affecting interstate commerce, such power to be "exclusive" and act to be "affected by any other means of ... prevention that has been or may be established by ... law, or otherwise." By \$101, amendatory section 10(a) of the Labor Management Relations Act, 29 U.S. C. A. (Pocket Part) \$160(a), the provision that the power should be exclusive was aliminated, leaving the rest of the provision quoted intact, and adding a proviso that the Board was empowered to cede to any

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ie gren. to perture a factorial for entrance of the second s ote lemporary velice of rectaining order. It will thus to seen that the Eulear Maringemous Relations and provided a complete rankely observer there was a charge presented to it of an unital action precise, so indirective legimetry relice on partition of the Board, a fine heaving by the Board, a rectain of such order in the Secret, a fine heaving by the Board, a rectain of such order in the Secret court. In our common rule, providing to a compressionaire remain precision of the State action privary of a different or additional remains for the correction of the schemes are additional remains for the correction of the schemes are common to the control of the scheme are common to the scheme of the

Workers Employment Relations Dours 306 U.S. 301, 106 line the House Report commentant upon section (6(a) of the National Lenor Relations Let said time with Board is thus made the restaurant against the fill and the Board is thus made the restaurant against to darking with the maker later presents temperated in the bill and that the Secure Report Relation the compact of the section is authority and to establish a size operation of authority and to establish a size operation with the development of the Federal American has regarding collective bargaining. The court, therefore, concluded that "So far as appears from the Committee Reports."

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The state of the s conditionary to the prophation of the least on the second Committee of the commit Course of American let us the little course of Course of Col. (Col. (Col court had held that the State Board had jurisdiction over charges that a labor union and an employer were guilty of unfair labor practices.

The Decree is successful at sour of appelless, and the hill is distant. The for want of his latter,

(fol. 240) In ma Surativa Court of Passingvaria, Minute Dispuse

Johnson (Kristian 1972) - Principle of Artificial States of Artificial S

Plaintiffe, the engreets in the recenting and engreen tents are in Harristony, songer and observed in injunction restraining a prior its officer and specific roun processary probeting its platform facilities at a railroad station where the platform facilities at a railroad station where the platform facilities at a railroad station where service. The picketing caused tremendous losses and in-

The contract of the contract o trotherwood of Toxisiter, Etc., Colon, Local Dob, A. ol. o. Haden of al., 359-ti-8, Artis Worlds, Mills, Inc., o. Leable Workers Union, 369 Pa., supra : Wilbonk v. Chester & Delaware Counties. Bartenders Union, 360 Ps. 48, 60 A. 2d 21; Phillips v. United Brotherhood of Carpenters, 362 Ps. 78, 66 A. 2d 227.

The purishing of State Courts to enjoin picketing, in-

The jurisdiction of State Courts to enjoin picketing, in-

duck a present is picketting which is conducted in an unlawful course to for an unlawful purpose, has been sustained by the Begroupe Court of the United States in over a doman track there, some of which are reviewed in Worker Mills v. backs Worker, the Pa., supple, stal in the discenting opinion is Austrian Brake Store Co. v. District Lodge 9, — Pa.

Moreover, in Asta Workers v Whoreigh Ecological State State (1987), 246, 248, Mr. Jeatine Jackers in sectability as to macrose against a union by a State Court of 161, 248. Wiscomer in matters off-coline interstate company, and the have all of the National Labor Delations Ast what is equally true of the Labor Manager state Relations Act of 1947 that 'Congress designedly left 1960, the area for state confrol and that the 'stignation of degrees to exclude States from exercising their police power should be desayly manifested. Allen Braciley Local v Wiscomers Therstoynest, Belations Board, 3th U.S. 170, 170, 1742. While the Federal Board is appropriate to fortist one because its method is illegal—even if he likewist were to consist of actual or threatened violence to persons or destruction of property. Policong of such conduct is left wholly to the states. This conduct is governable by the State or it is naturely negaversed.

The Supreme Court of the United States has not special.

The Supreme Court of the United States has not special saily decided the question here involved and a number of sections of that Court and of this Court indicate that the State Courts still have jurisdiction upon those or smaller facts. Since the intention of Congress to exclude State Courts from exercising their traditional and long-established equity powers in this mass of case is not clearly manifested I would uphold and gustain the jurisdiction of our State Courts.

For these reasons—without discussing or deciding the merits of the case—I dissent.

^{&#}x27;Italies throughout, ours.

[fol 244] In the Superior Cours of Permaylvania, Middle

No. Al

Tile Califor

Petities for Reserve

William Brokerstole the Trinds and of

The petition of Joseph Carner and A. Joseph Garner, tracking as Central Storage and Transfer Company, appel-less, in the above case by their attorneys, David S. Kohn usd James H. Boscer, respectfully prays your Honorable Court to grant them a robotring for the following reasons. 1. The Court has reversed a well-considered final decree of the Court of Common Pleas of Bunghin County on the

besis solely of affirmative enswer to the question (speet to Court's common)

er Congress intended to exclude State ection entering probable which constituted as enfair me on the part of a labor organization under the previsions of the Labor Management Relations Act. where such picketing was unlawful also under the State

Beyond that, the Court agrees that the Dauphin County Court correctly held that Congress has not preempted in-risdiction over every aspect of labor relations and that Congress has not preempted that portion of the field of labor relations relating to concerted activities, and the Court recognizes (sheet 4 of Court's opinion) that

[fol. 245] "... there are many phases of labor relations affecting interstate commerce in which the equity powers of the State remain intact."

The Court further finds no inconsistency (sheets 5 to 7 of Court's opinion) between the policy of the Labor Management Relations Act and the final decree. Moreover the Court holds (sheets ? . . d 4 of Court's opinion) that by section 8(b) (2) of the Labor Management Relations Act

"... the Act of Congress prohibits the same activity on the part of a labor organization . . to coerce

the employer into committing what the act does declare to be an unfair labor practice on his part."

At the same time, the Court holds (sheet 3 of Court's spinion) that

- the State, for an unlawful purpose and, if the State court had jurisdiction in spite of the Cat that plaintiffs were largely engaged in interstate commerce, it was proper to enjoin it:
- 2. To that parrowed jurisdictional question, deemed controlling by the Court, neither Congress nor the Supremo Court of the United States has undertaken to furnish an affirmative answer requiring a revorsal of the final decree of an outstanding common pleas court. There is no disagreement expressed in the Court's opinion (see sheets 4 and 7 to 9) with the positive statement in the dissenting opinion (at sheet 2) of Mr. Justice Bell that

Where peaceful picketing causes irreparable damage and one of its objectives violates not only a statute of Pennsylvania but also a provision of the Taft-Hartley Act, the jurisdiction of State Courts has not yet been apecifically decided by Congress or by the Supreme Court of the United States."

There was related argument (after the submission on May 28, 1952 of this case) on November 13, 1952 before the Supreme Court of the United States in Montgomery Building and Construction Trades Council, et al. v. Ledbetter Erection Co., Inc., 73 S. Ct. 196, where the state court, we gather, acted on the basis of the Labor Management Relations Act itself, and not on the basis of state law, thus going consid-[fol. 246] erably further than our case. In that case the Supreme Court on December 8, 1952, ordered that

- ". ... the petition for certiorari must be dismissed as improvidently granted."
- 3. Relevant arguments presented to the Supreme Court of the United States in that most recent Ledbetter case were not presented to this Court in the briefs in this case nor in

the oral argument. For example, counsel for Ledbetter in oral argument (see 31 LER 23) called attention to availability of emotomery remedies in state courts as shown by Congressional Mistory of Section 10 (a).

4. The decision of the Congress Court of Alabams in Montgomery Building & Construction Trades Council, et al.

v. Lacibetter Erection Co., Inc., 57 So. 2d 112-122 (which became final March 6, 1952) was not called to the attention of this Court. As there (at page 117) pointed out, the conference agreement made clear the Congressional intention, under section 10(a) that

" - when two remodies area; one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies.

5. In reversing on the narrow basis that the applicability of section 8(b) 2 conferred jurisdiction on the National Labor Relations Board which was exclusive under section 10(a), the Court did not have the benefit of Prialled briefs and oral argument, developing the following significance of the language of section 10(a). Section 10(a) provides (29 U.S.C.A. sec. 160, pocket part) that

[fol. 247] "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith."

6. The maining of the power of an agency to prevent unfair labor practices was apparently not canvasced by the Court. The Court went beak to section 10(a) of the National Labor Relations Act of 1985, where there was supress provision that such power should be "exclusive" (sheet I of Court's opinion) and quoted (abset 5 of Court's opinion) Cormittee Reports, in relation to that different, earlier legislation describing the National Board (italies supplied) as "the paramount agency for dealing with the unfair labor practices" and as the "paramount admission fractive or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining."

lective bargaining."

7. On the other hand, the meaning of such agency, administrative prevention has been developed (July 1952) in 27 New York University Law Review 468-477, and supports state court jurisdiction. It is there stated, at page 472:

[foi. 248] "State jurisdiction to render common law relief to an individual harmed by tortious conduct which is also proscribed by the Taft-Hartley Act may be preserved by construing Section 40A as merely giving the NLRB the exclusive power to 'prevent' unfair labor practices. The theory is that Section 10A should be directed against state administrative agencies whose wide discretionary powers allow for conflict with national policies, but that courts administering private rights should not be precluded as a court operates in the narrow scope of the fact situation immediately before it and can only apply the existing law. Thus, preserv don of common law remedies for the individual will not infringe on a national labor policy "Cherwise the Taft-Hartley Act would create a possible vacuum increased by the discretionary power of the NLRB to refuse jurisdiction."

8. Such fundamental consideration of what it was that was exclusive, or not, was completely overlooked by this Court, in its brief discussion of the effect of the deletion by Congress of the word "exclusive" in relation to the Board's power. Since Congress in 1935 made exclusive in the Board

only administrative agency power to prevent unfair labor practices in relation to development of the Federal American law regarding collective bargaining, the 1947 amendment deleting the word "exclusive" obviously expressed no Congressional intention to be more exclusive. Congress did not thereby aliminate the power which state courts had continued to exercise to adjudicate fact situations in which individuals had been harmed by conduct tortions under state law. This consideration of the precise Congressional language will eliminate the glaring inconsistency between the Court's rationale and the Court's absolutely correct insistence (sheet 4 of Court's opinion) that

power." the State is not excluded from exercising its

See Petro, State Jurisdiction to Regulate Violent Picketing, 3 Labor Law Journal 3 (1952). [fol. 249] 9. As carefully analyzed by Petro, State Jurisdiction to Regulate Violent Picketing, 3 Labor Law Journal 3, 72:

this word 'prevent' may be the key at once to plumbing the Congressional intent in Section 10(a) and to reaching some reasonable conclusion as to the scope of the section. When used in connection with administrative action, even of the 'quesi-judicial' type, the term 'prevent' has connotations different from those surrounding our ordinary concepts of enforcement of legislation through traditional judicial process, and certainly different from those which might apply in using the word 'prevent' to describe what the common law has classically done. * * the NLBB has always been thought of as an agency conceived to effectuate uniformly over the nation a broad national policy. * * With these conceptions one must contrast the more narrow concept that a traditional court in the ordinary common law case only 'finds the law,' and in a modest case by case way, applies that law to correct the barm done to a legally protected interest.

"The importance of these observations lies in their implicit suggestion that Section 10(a) does not pre-

elude traditional court action, based on common law or pre-existing state statutes, meraly because such action may take place in s case involving conduct which happens to amount also to an NLRA unfair labor practice."

10. The foregoing analysis is confirmed by additional language in section 10(a) supporting state court jurisdiction to adjudicate. The Court indeed referred to this additional language as explaining Congressional elimination of the term "exclusive" (sheet 9 of Court's opinion) and said

the National Board might, if it saw fit in the case of certain industries, code jurisdiction to a State agency where there was no beconsistency in the provisions of the State and Federal Statutes. This proviso would seem to emphasize the power of the National Board to pass initially upon each such case, since it obviously implies that a State agency was to exercise jurisdiction only if ceded to it by the National Board."

But again the Court completely overlooked the use by Congress of the word "agency." Counsel, too, had not called the attention of the Court to the legislative history spelling out the scope of the word "agency" as relating to state labor relations boards. In Senate Report No. 105, 80th [fol. 250] Congress, 1st Session (accompanying S. 1126, or the Federal Labor Relations Act of 1947 as it was at the moment called), at page 26, "agency" is expressly equated with a state administrative board, the Report states,—

"Section 10(a): The proviso which has been added to this subsection permits the National Board to allow State labor-relations boards to take final jurisdiction of mass." provided the State statute conforms to national policy."

Provision was thus made for ceding jurisdiction to a State "agency" or labor relations board because the jurisdiction of the National Board was exclusive of state board jurisdiction under the Bethlehem case, see La Crosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U.S.

18, 25-27, 69 S. Ct. 379, 353-363 and note 11. Where, as explained by Mr. Justice Douglas in the La Crosse case,

"Hoth the state and the federal statutes had laid hold of the same relationship and had provided different standards for its regulation." We thought the situation too fraught with potential conflict to permit the intrusion of the state agency."

No such "real potentials of conflict" ever existed in caseby case adjudication of tort cases, necessarily consistently with federal legislation. There was no provise for ceding jurisdiction to state courts. None was needed. State court jurisdiction had never been excluded. The limited terms of the provise found in section 10(a), restricted to wate "agency" jurisdiction over any industry, recognized the uniform practice in the state courts to adjudicate, under consistent state law, tort cases involving employers and employees. When thus understood the additional language in section 10(a), which the Court deemed significant, requires a reconsideration of the Court's opinion and resultant order.

11. Congress in 1947 was well aware that it was creating administrative agency remedica through the National [fol. 251] Board that duplicated local sourt remedies existing under state law. That was made the basis for argument against creating the administrative agency remedies; but they were created as desirable duplicates. There was no thought that the duplicates ipso facto excluded the state court remedies that were necessarily presupposed by the very argument that they were duplicates.

This clearly appears in the Labor Management Belations Act debates on the amendments adding unfair labor practices on the part of labor organizations: 93 Cong. Rec. 4560-4561. As stated by Scantor Taft (93 Cong. Rec. 4562,

4553)

"Like the Senator from Minnesota, I am not very fond of the administrative procedure, but it is believed that if we retain the unfair labor practice procedure against employers, an effort should be made to bring about some measure of equality by defining unfair labor practices on the part of labor unions." threatens a man personally, or sands threatening letters to him, saying it is going to beat him and his family if he does not join the union, and the Board then finds that that was done, and issues a cease and desist order, it may be it would encourage a district attorney, or some of the local courts, to take unwarranted action. But in such a case the union ought to be punished. An injunction ought to be issued to prevent such a procedure.

I wish to point out that the provisions agreed to by the committee covering unfair labor practices on the part of labor unions also might duplicate to some extent that State law."

Senator Taft clearly distinguished the continued power of a local state court to do its duty and the continued lack of power of a federal court under the Norris-LaGuardia Act in issuing injunctions. Senator Taft recognized the continuing jurisdiction of a local state court:

[fol. 252] Mr. Morse. I believe with the Senator that that sort of action should be stopped. It should be stopped through State laws and not through a Federal law. The point I am seeking to make is that with this amendment on the statute books I think it will be found that the very filing of the allegations will cause courts to proceed to issue injunctions. That is why I say I think it will be a tremendous handicap to legitimate strikes and legitimate organizational activities.

"Mr. Taft. The bill does not in any way change the right of the Federal court to issue an injunction. The Senator is suggesting that the enactment of this proposed legislation will bring about a condition which will compel the local court to do its duty. If that will be the result, I believe it will be a beneficial effect. " to some extent the measure may be duplicating the remedy existing under State law. But that, in my opinion, is no valid argument."

12. A reappraisal of section 10(a) of the Labor Management Relations Act will avoid the serious consequences of mistakenly imputing to the Eightieth Congress the amputation of a practical remedy for traditional torts.

Wherefore, petitioners respectfully neek perceission to argue such additional or new matters bearing so forcefully on the question whether Congress intended to exclude State court action enjoining photesting which constituted an unfair labor practice on the part of a labor organization under the provisions of the Labor Management Relations Act, where such picketing was unlawful also under the State law.

David S. Kohn, HeNses, Wallace and Nurick, of Counsel, James H. Booser, Counsel for Appelless.

[fol. 253] In the Surmille Court of Persentants (Minus District)

No. 26

[Title emitted]

ORDER DENVING RESERVE-March 24, 1953

The following order of court appears on the back of the foregoing petition for reargument: "Petition Denied per Curiam."

[fol. 254] In the Superior Court of Propertyania Middle District

No. 26

[Title omitted]

PRAECIPE FOR TRANSCREPT OF RECORD

To the Prothonotary of the Said Court:

Kindly prepare and certify to the Supreme Court of the United States the following papers:

(1) Docket entries;

(2) The printed record as it appeared at the time the above case was argued in the Pennsylvania Supreme Court;

(3) The majority opinion of the Supreme Court:

(4) The dissenting opinion filed in the said case;

(5) The politica for re-argument and order thereon.

David S. Kohs, Nation & Warick, By James H. Bouser, Attorneys for Appelloss.

Accreviationary of Surveys or Pressure Passers—
Omitted in Printing

[fole 255 256] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 257] Surgana Court of the Univer States, October Taris, 1952

No. 773

Joseph Garage and A. Joseph Garam, Preding to Certain Stonate and Pranson Compart, Politicary,

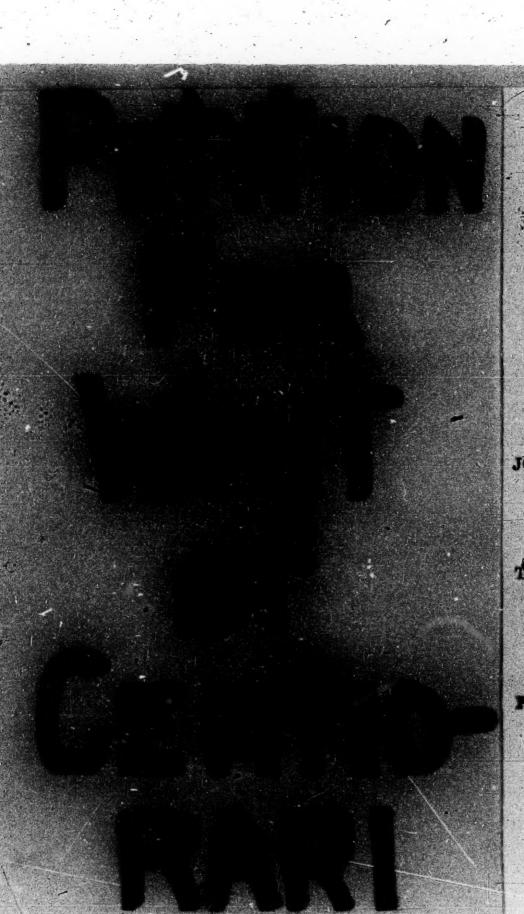
Transfers, Chauporum and Relevan Local Union No. 776 (A.D.L.), et al.

Subra Araborres Carriessas-Print Lone D. 1968.

The petition kerein for a writed certioner to the Supreme Court of the Commonwealth of Pennsylvania, Middle District, is granted, and the case is transferred to the sessionary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the patition shall be treated as though filed in response to such writ.





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MAY 1 1953

HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OUTOBER TERM, 1860 / 953

No. 273 56

JOSEPH GARNER AND A. JOSEPH GARNER, TRADING
AS CRETRAL STORAGE AND TRANSFER COMPANY,

Petitioners,

VB. \

TEAMSTERS, CHAUFFEURS AND HELPERS, LO-CAL UNION NO. 776 (A. F. L.) ED LONG, PERSONNEL, ALLEN KLINE, BUSINESS MANAGER, ITS OTHER COPPLERS AND AGENTS

1

PETITION FOR A WRIT OF CERTIONARI TO THE SUPREME COURT OF PENESYLVANIA

DAVID S. KOHN,

JAMES H. BOOSES,

Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 773

JOSEPH GARNER AND A. JOSEPH GARNER, TRADING AS CENTRAL STORAGE AND TRANSPER COMPANY, Petitioners.

28.

TEAMSTERS, CHAUFFEURS AND HELPERS, LO-CAL UNION NO. 776 (A. F. L.) ED LONG, PRESIDENT, ALLEN KLINE, BUSINESS MANAGER, ITS OTHER OFFICERS AND AGESTS

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Petitioners Joseph Garner and A. Joseph Garner, trading as Central Storage and Transfer Company (hereinafter referred to as Central), pray that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania, entered in the above-entitled case on February 13, 1953.

Opinions Balow

The opinion of the trial court, the Court of Common Pleas of Dauphin County, is reported in Volume 62 of the Dauphin County Reporter (advance sheet No. 41 of June 4,

1952) at pages 339-366. The opinion of the Supreme Court of Pennsylvania is reported in 373 Pa. (advance sheet No. 14 of April 3, 1953) at pages 19-30 and the dissenting opinion at pages 30-34.

Jurisdiction

The jurisdiction of this court is invoked under 28 U. S. C., sec. 1257(3), permitting review by certiorari of a case involving the construction of a federal statute: Murray v. Joe Gerrick & Co., et al., 291 U. S. 315, 316, 54 S. Ct. 432, 433; Stern and Gressman, Supreme Court Practice (1950) page 56.

The Supreme Court of Pennsylvania, the highest court of the state in which a decision could be had, by its judgment of February 13, 1953, reversed the trial court's final decree granting a preliminary injunction and "dismissed for want of jurisdiction" Central's bill in equity for the sole reason that (R. 238)

"It is our opinion, therefore, that, since the plaintiff employers in the present case were engaged in interstate commerce, and the charge made by them was that the defendant Union was engaged in an activity which was unlawful inder the law of the State but which also constituted an unfair labor practice under the provisions of the Labor Management Relations Act, and since that act provides an adequate and complete administrative remedy to prevent the continuance of such activity if the charge be substantiated, the Court of Common Pleas of Dauphin County had no jurisdiction to issue an injunction in this case against the defendant."

This federal question was the only question decided. The respondents had raised this question in the court of first instance, the Court of Common Pleas of Dauphin County, by their additional exceptions 16, 17 and 18 (R. 108, 109) of July 27, 1949, to the preliminary in-

junction and decree of June 17, 1949, and by numerous exceptions, such as exceptions 26, 27 (R. 210, 211), 43 (R. 216), and 50 (R. 218) to the adjudication and decree nisi of September 4, 1951. The court of first instance (R. 181-193) considered at length this question "did Congress vest in the National Labor Relations Board exclusive jurisdiction" and concluded that:

". . . we hold that primary jurisdiction over the conduct of the Union here in question did not vest in the NLRB under either section 10(a), section 7 or any other provision of the Taft-Hartley Act."

The court of first instance, after bearing testimony offered by both parties, and making findings of fact, entered a final decree (R. 228, 202) permanently enjoining picketing or patrolling of petitioners' 9th and Market Street terminal in Harrisburg, Pennsylvania, when (R. 179) "deliberately designed to coerce Central" to compel its employees to become members" of respondent Union.

Such final injunctive relief was reversed by the Supreme Court of Pennsylvania solely for lack of jurisdiction under its construction of the Labor Management Relations Act, 1947, as proscribing as an unfair labor practice under section 8(b)(2), 29 U. S. C. A., sec. 158 pocket part, the respondents' conduct (R. 235-236) and as therefore conferring upon the National Labor Relations Board (R. 238) under section 10(a) as amended, exclusive jurisdiction.

Question Presented

Does the Labor Management Relations Act, 1947, oust the jurisdiction of a state court to enjoin picketing for the purpose of coercing an employer to compel its employees to become members of the picketing union, where the injunction was based upon state legislation which made that purpose unlawful?

The Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. A., sec. 141 (petitioners ask leave to refrain from reprinting at this point its numerous provisions which may have some bearing on the argument on the merits) provides, most pertinently, in sections 10(a) and 8(b)(2), in part as follows:

29 U.S.C.A., sec. 160 10(a), 61 Stat. 146

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise:

29 U.S.C.A., sec. 158 8(b)(2), 61 Stat. 141

"It shall be an unfair labor practice for a labor organization or its agents "to cause or attempt to cause an employer to d'acriminate against an employee in violation of subsection (a) (3) of this section "ties, as subsection (a) (3) provides: "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization")

Statement

Central (as we refer for convenience to petitioners, who are partners trading as Central Storage and Transfer Company) is engaged in the trucking and storage business in Harrisburg. Central performs local freight pickup and delivery service (R. 171) for the Reading Railroad Company and its trucking division, the Reading Transportation Company (as well as some fifteen other trucking firms) from a

platform at the rear of the Reading Railroad Freight Station at 9th and Market Streets. Central (R. 172) employs 24 persons as truckers, helpers and platform men, 4 of its employees being members of respondent Union. Central (R. 173) has never objected, and does not presently object, to any of its employees joining the Union.

On June 7, 1949, rotating pickets, two at a time, none of whom was an employee of Central, were placed (R. 174) by respondent Union, one in front of and the other at the entrance to Central's Reading loading platform. The pickets carried signs bearing the following legend:

"Local 776 Teamsters Union (A. F. of L.) wants Employees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions."

This picketing was conducted at all times in an orderly and peaceful manner. Neither then nor at any other time (R. 175) has there been any controversy or labor dispute between Central and its employees, none of whom were on strike. While the picketing continued union truck drivers and helpers (R. 176) employed by the Reading Transportation Company and other interchange carriers refused to cross the picket line; as the bulk of Central's operations was with unionized trucking concerns the consequence was that its local business fell off 95%, causing a loss to it of between \$400 and \$500 per day, in addition to which (R. 178) it stood to have its contract with the Reading Transportation Company cancelled and its terminal facilities with the Reading Railroad Company vacated. The foregoing facts were found by the trial court (R. 171-179) and appear in the opinion of the Pennsylvania Supreme Court (R. 232-233).

Central, on June 9, 1949 (R. 1, 4) brought a bill in equity against respondents to enjoin the picketing, and on June 17, 1949 (R. 1), the trial court (the Court of Common Pleas of Dauphin County, Pennsylvania), after hearing testimony (R. 13-101) offered by both sides, decreed (R. 102) that a preliminary injunction should issue as prayed for. Subsequently additional testimony was taken on final (R. 112-131, R. 137-166) hearing, and, on September 4, 1951 (R. 2, R. 169-202) the court entered a decree nisi enjoining and restraining respondents from picketing Central's Reading pickup and delivery terminal; exceptions (R. 203-221) filed by respondents were dismissed (R. 2-3, R. 221-228) and a final decree was entered in accordance with the decree nisi on March 3, 1952.

From that final decree respondents appealed to the Supreme Court of Pennsylvania which, without considering the merits of the controversy, reversed the decree and dismissed Central's bill for lack of jurisdiction in view of sections 8(b)(2) and 10(a) of the Labor Management Relations Act, 1947. The Supreme Court of Pennsylvania, one justice dissenting, held that the federal legislation vested exclusive jurisdiction in the National Labor Relations Board.

The Supreme Court of Pennsylvania handed down its decision, reversing the final decree, on February 13, 1953. On February 20 Central filed its petition for re-argument, well within the ten-day period, as prescribed in Rules 69 and 73 of the Supreme Court of Pennsylvania. On March 24, 1953, the Supreme Court of Pennsylvania denied Central's petition.

On March 31, 1953, Central filed its praecipe for certification of the record to the Supreme Court of the United States, and promptly thereafter, upon completion of such certification by the prothonotary, lodged the certified record

with the Supreme Court of the United States and filed this petition for a writ of certiorari well within the "ninety days" permitted by statute (28 U.S.C.A. sec. 2101(e)) from the time when, on March 24, 1953, the petition for reargument was disposed of, and the judgment became final for purposes of United States Supreme Court review: Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States (1936), section 354, page 720; see Department of Banking, State of Nebraska v. Pink, 317 U. S. 264, 266, 63 S. Ct. 233, 234; see Gypsy Oil Co. v. Escoe, 275 U. S. 498, 48 S. Ct. 112, 113.

Specification of Errors to Be Urged

7

The Supreme Court of Pennsylvania erred: 1

1. In holding that the Court of Common Pleas of Dauphin County was without jurisdiction to issue an injunction under state law against picketing for the unlawful purpose of coercing the employer to compel its employees to become members of the picketing labor organization.

2. In holding that section 8(b)(2) of the Labor Management Relations Act, 1947) applied to the facts found.

3. In holding that the Labor Management Belations Act, 1947, conferred exclusive jurisdiction upon the National Labor Belations Board.

4. In reversing the final decree of the trial court.

Reasons for Granting Writ

1. The decision of the Supreme Court of Pennsylvania is in direct conflict with the decision of the Supreme Court of Alabama in Montgomery Building & Construction Trades Council, et al. v. Ledbetter Erection Co., Inc., 256 Ala. 678, 57 So. 2d 112, rehearing denied, 256 Ala. 689, 57 So. 2d 121, as well as with the final judgment (relied upon by the court of first instance, R. 189-192) of the Supreme Court of Mis-

souri in Kincaid-Webber Meter Co. v. Quinn, 241 S. W. (2d) 886 (Mo. 1951). Such a conflict of decisions between the highest courts of two or more states on the construction of a federal statute is valid ground for the issuance of the writ. Compare Williams v. Cedartown Textiles, 208 Ga. 659, 68 S. E. 2d 705, 708 (1952) recognizing "concurrent remedies" and Goodson's, Inc. v. Hagedorn, 303 N. Y. 300, 101 N. E. 2d 697, where Loughran, J. stated:

"Nor does the Federal Labor Management Relations Act (as we see it) disable our State courts from acting in the circumstances of this case."

The decision of the Supreme Court of Pennsylvania is also in conflict with the most recent decision of March 10, 1953, of the Supreme Court of California in Sommer v. Metal Trades Council, 53 American Labor Cases 509. A final construction of the statute by this court will "settle an important question" as to the power and jurisdiction of a state court: see Baltimore National Bank v. State Tax Commission of Maryland, 297 U.S. 209, 211, 56 S. Ct. 417, 418.

2. It is in the public interest for this Court to review and resolve an important and unsettled question of the construction of the Labor Management Relations Act, 1947. Certiorari has been granted in a substantial number of cases, as in Federal Land Bank of St. Louis v. Priddy, 295 U. S. 229, 230, 55 S. Ct. 705, 706, even in the absence of any conflict of decisions, to review a decision of the highest court of a state regarding the construction of a federal statute. The extent to which the Labor Management Relations Act, 1947, permits continued exercise of state court jurisdiction to enjoin or adjudicate acts, whether peaceable or violent, contrary to state legislation or common law, is of vital significance to substantial cross-sections of the public in many states. A recent illustration is found in The Richman

Brothers Company v. Amalgamated Clothing Workers of America, No. 641,936 in the Court of Common Pleas of Cuyahoga County, Ohio, where on April 14, 1953, that court enjoined picketing "for the unlawful purpose of forcing an employer to force that unionization of its help which for years that same help has refused at the beheat of Amalgamated" and said:

"The within hearing has been delayed for five months so that the Amalgamated could carry to the limit its claim that States or State Courts have no longer any right to assume jurisdiction over its within activities."

We hold they are amenable to our State laws and the jurisdiction of our State Courts."

3. The decision of the Pennsylvan's Supreme Court is believed to be erroneous. Some of the reasons appear in the petition for re-argument (R. 246-250), in the dissenting opinion of Mr. Justice Bell (R. 238-241), in Petro, Participation by the States in the Enforcement and Development of National Labor Policy. New York University Fifth Annual Conference on Labor (1952), pages 1-76, and in the cases referred to under our first reason. Congress has not clearly manifested an exclusion of the state power sought to be exercised in this case: International Union v. Wisconsin Employment Belations Board. 336 U. S. 245, 253, 69 S. Ct. 516, 521.

4. This court granted certification Montgomery Building and Construction Trades Council, et al. v. Ledbetter Krection Company, Inc., 343 U. S. 962, 72 S. Ct. 1061. That petition for certification was later dismissed as improvidently granted. Montgomery Building and Construction Trades Council, et al. v. Ledbetter Erection Co., Inc., — U. S. —, 78 S. Ct. 196, because the state court injunction challenged under the Labor Management Relations Act, 1947, was a temporary injunction. The present petition for review of

a final judgment presents a related question of state court jurisdiction to enforce the provisions of a state statute, consistent with the federal policy enacted in 1947, making the defined union activity unlawful and subject to restraint.

Concination

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

David S. Konu, James H. Boosse, Counsel for Petitioners.

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In THE

Supreme Court of the United States

October Term, 1953 NO. 88

JOSEPH GARNER and A. JOSEPH GARNER, trading as CENTRAL STORAGE & TRANSFER COMPANY,

Petitioners

TEAMSTERS, CHAUFFEURS and HELPERS, LOCAL UNION No. 776 (A.F.L.), ED LONG, President, ALLEN KLINE, Business Manager, its other officers and agents,

BRIEF FOR PETTYIONERS

On Writ of Certiorari to the Supreme Court of Pennsylvania

JAMES H. BOOSER,
DAVID S. KOHN,
Attorneys for Petitioners.

Commerce Building Harrisburg, Pa.

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IN THE

SUPREME COURT OF THE UNIVER STATES

October Term, 1953

No 16

Joseph Garner and A. Joseph Garner, trading as Central Storage & Transfer Company,

Petitioners

Teamsters, Chauffeurs and Helpers, Local Union No. 776 (A.F.L.), Ed Long, President, Allen Kline, Business Manager, its other officers and agents.

On writ of Certiorari to the Supreme Court of Pennsylvania

RRIEF FOR PRIVICEPER

OPINIONS BELOW

The opinion of the trial court, the Court of Common Pleas of Dauphin County, Pennsylvania, is re-· ported in 62 Dauphin County Reporter 339-366. The opinion of the Supreme Court of Pennsylvania is reported in 373 Pa. 19-30 and at pages 30-34, the dissenting opinion.

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QUESTION PRESENTED

Does the Labor Management Relations Act, 1947, oust the jurisdiction of a state court to enjoin picketing for the purpose of coercing an employer to compel its employers to become members of the picketing union, where the injunction was based upon state legislation which made that purpose unlawful?

STATUTE INVOLVED

The statute involved is the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U.S.C. Supp. V. sections 141, et seq., 29 U.S.C.A. pocket part, sections 141, et seq. The complete text of the Labor Management Relations Act, 1947, is also set forth at pages 1 to 30 in Volume 1 of the Legislative History of the Labor Management Relations Act, 1947 (United States Printing Office, Washington, 1948), published by the National [Labor] Relations Board. In the second volume of that Legislative History of the Labor Management Act, 1947, pages 1661 to 1690, there is set forth a convenient comparison of the National Labor Relations Act of 1935 with Title I of the Labor Management Relations Act of 1947. Pertinent provisions, quoted from the United States Statutes at Large, include the following:

Statute Involved +

indings and Policies

"Section 1. " " "

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full

freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

"Rights of Employees

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

"Unfair Labor Practices

- "Sec. 8. (a) It shall be an unfair labor practice for an employer—
- "(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
- "(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: " "

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- "(b) It shall be an unfair labor practice for a labor organization or its agents—
- "(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in sections 7: •••
- "(2) to cause or attempt to cause an employer to discriminate against an employee in violation of sub-section (a) (3) * *

"Prevention of Unfair Labor Practices

"Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce. unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

STATEMENT

On June 9, 1949, Central (as we refer for convenience to petitioners, who are partners trading as Central Storage & Transfer Company) filed a compaint in a state county court of common pleas at Harrisburg, Pennsylvania, against the Teamsters (Teamsters, Chauffeurs and Helpers Local Union No. 776. A.F.L., and its president and business manager) requesting an injunction against picketing allegedly intended or calculated to coerce Central to compel or require its employees to become members of that union (R. 1, 4-7). On June 13, Teamsters filed an answer and motion to dismiss (R. 1, 8-12), likewise making no reference to the Labor Management Relations Act. On June 17, after hearing testimony offered by both Central and Teamsters (R. 1, 13-101), the state court decreed that a preliminary injunction should issue (R. 102) against picketing "clearly intended and calculated to coerce the plaintiffs (Central) into a violation of law by requiring them to force their employees, a majority of whom are not members of any labor organization and with whom they have no labor dispute, to join the defendant union (Teamsters) * * *** Subsequently additional testimony was taken on final hearing (R. 111-166), tried together with a companion proceeding by George W. Weaver & Son, Inc., against the Teamsters presenting similar issues which it was stipulated would be determined by the final decision in the Central proceeding (R. 168). On September 4,

1951, the court filed forty findings of fact (R. 171-179), accompanied by an elaborate discussion (R. 179-200) and entered a decree nist under Pennsylvania practice followed by a final decree of March 3, 1952 (R. 228), accompanied by an opinion (R. 221-227) overruling some fifty-nine exceptions filed by the Teamsters to the decree nist (R. 203-221) making permanent the injunction against picketing (R. 179, Finding of Fact 40, R. 224):

by causing it substantial business losses, to compel or require its employees to become members of the (Teamsters) Union."

The jurisdiction of the state court was seasonably challenged by the Teamsters by exceptions of September 14, 1951 (R. 203-221) to the decree nisi. By exception No. 43 (R. 216) for example the Teamsters contended that:

"Congress * * * pre-empted jurisdiction over the subject-matter of these proceedings * * * by the Labor-Management Relations Act * * *"

The Teamsters on March 19, 1952 (R. 229) to the Supreme Court of Pennsylvania. On February 13, 1963, the Supreme Court of Pennsylvania reversed the decree (R. 229, 238), dismissed the complaint for want of jurisdiction and held (R. 238) that:

"Plaintiffs' remedy must be sought by them (Central) in proceedings before the National Labor Relations Board, where an injunctive remedy, as previously pointed out, is available."

The Supreme Court of Pennsylvania recognized that, under the facts found by the trial court, such picketing would have been, by the law of Pennsylvania, for an unlawful purpose (R. 231, R. 232),

** * because aimed to coerce the employer into committing what the [Pennsylvania] act does declare to be an unfair labor practice * * ***

The findings of the trial court, as summarized in . part in the opinion of the Pennsylvania Supreme Court (R. 171-179, R. 230-231) were as follows: In the conduct of its trucking business at Harrisburg, Pennsylvania, with principal office at 11th and State Streets, Central utilizes a platform at 9th and Market Streets at the rear of the Reading Railroad freight, station in its performance of local freight pickup and delivery service for The Reading Railroad Company, and its trucking division, The Reading Transportation Company, as well as some fifteen other trucking firms (B. 171). Some of the freight thus delivered to consignees in Harrisburg from that Reading platform in Harrisburg is interstate, originating at points outside of Pennsylvania on the lines of the Reading Railroad (R. 171-172). Central employs twenty-four persons as truckers, helpers and platform men (R. 172).

The Teamsters, Harrisburg Local, has approximately four hundred members (R. 115, 172) engaged as truck drivers and helpers. This Teamsters, Chauffeurs and Helpers, Local Union No. 776 (A.F.L.), at Harrisburg, is a branch of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American

Federation of Labor, organized with comparable locals in other communities, including York, Lancaster and Reading, in the immediate neighborhood of Harrisburg (R. 172, B. 173). The Teamsters had organized most of the over-the-road carriers serving Harrisburg (R. 178) but had been unsuccessful in enrolling in its membership the truck drivers, helpers or warehousemen employed by a number of local Harrisburg dray and freight carriers (R. 173-174) such as Central, Hill Express, Merchants Delivery, Montgomery & Company and George W. Weaver. Central never objected, and does not presently object, to any of its employees joining Teamsters (R. 173). Teamsters had enrolled in its membership, after approximately fifteen years of effort, only four employees of Central (R. 172, R. 173). On June 7, 1949, rotating pickets, two at a time, were placed by Teamsters, one in front of. and the other at the entrance to, the Reading platform utilized by Central; none of the pickets were employees of Central (R. 174). The pickets tarried, signs bearing the following legend:

"Local 776 Teamsters Union (A.F. of L.) wants Eraployees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions."

Neither then nor at any other time (R. 172, R. 175—wages above union scale, R. 173) has there been any controversy or labor dispute between Central and its employees, none of whom were on strike. This picketing was conducted at all times in an orderly and peaceful manner (R. 174)

While the picketing continued Teamster truck drivers and helpers employed by The Reading Transportation Company and other over-the-road motor carriers refused to cross the picket line (R. 176). As the bulk of Central's operation was with unionized trucking concerns, the consequence was that Central's local business fell off 96%, causing a loss to it of between \$400 and \$500 per day (R. 176, R. 178).

We have also a finding of fact by the state court as to the purpose of the picketing. The state court found (R. 179a, R. 224a-225a) that the picketing was

by causing it substantial business losces, to compel or require its employees to become members of the (Teamsters) Union."

The findings thus summarized had a reasonable basis in the evidence: Finding No. 1, R. 16 and 19-20; No. 2, R. 21 and 86; No. 3, R. 21 and 22; No. 4, R. 22; No. 5, R. 22, 23 and 36-37; No. 6, R. 16, 72 and 89; No. 7, R. 51, 72 and 115; No. 8, R. 16, 20, 124 and 151; No. 9, R. 17, 20 and 50; No. 10, R. 40, 64 and 150; No. 11, R. 25, 40 and 64; No. 12, R. 25 and 40; No. 14, R. 39-40; No. 15, R. 93, 94, 97-98 and 99-101; No. 16, R. 18 and 21; No. 17, R. 21 and 29; No. 18, R. 17; No. 24, R. 23, 27-32, 36, 44, 47, 50, 51, 53, 55, 56; No. 25, R. 23, 27; No. 34, R. 28, 44, 45, 58, 55 and 57. While the Supreme Court must have the ultimate power to re-examine findings when necessary to accurain whether a finding denying a federal right is unsupported by evidence, in its justified search of the record the Supreme Court will not disturb the findings of fact of the state court unless ascertained to be without at pport in the evidence, including any reasonable inference that may be drawn from it: Milk Wagon Drivers Union, etc. v. Meadow-Moor Dairies, Inc., 312 U.S. 287, 299, 294; Local Union No. 10, etc. v. Graham, et al., — U.S. —, 73 S. Ct. 585, 588, and note 4.

Some of the supporting evidence is summarized in Appendix A.

"The effect of the picketing was confirmatory of its purpose as found by the trial court."

The picketing was done at such a place and in such a manner that, coupled with established union policies and traditions, it caused the union drivers of the overthe-road carriers transporting freight to and from Harrisburg to stop doing business with Central; it thus paralyzed the local terminal pickup and delivery service in Harrisburg which was utterly dependent upon over-the-road truck transportation by such unionized truck lines. It was part of a sudden knockout campaign, after slow years of continuous unsuccessful effort by Teamsters, to force into that union all the drivers of local Harrisburg draymen by organising (see Appendix B) from the top.

" • the Federal act would stamp this picketing as an unfair labor practice, whereas the State act does not so list it but our courts have declared it to be unlawful because aimed to coerce

the employer to committing what the act does declare to be an unfair labor practice on his part.

"The problem presented, therefore, is whether, under such bircumstances, the Labor Management Relations Act constituted an absolute and complete preemption of the field so as to preclude State action, and the test of decision is the intention of Congress."

William Street Programmed The Street

SPECIFICATION OF ERBORS

The Supreme Court of Pennsylvania erred:

- 1. In holding that the Court of Common Pleas of Dauphin County was without jurisdiction to issue an injunction under state law against picketing for the unlawful purpose of coercing the employer to compel its employees to become members of the picketing labor organization.
- 2. In holding that the Labor Management Relations Act, 1947, conferred exclusive jurisdiction upon the National Labor Relations Board.
- 3. In reversing the final decree of the trial court.

ARGUMENT

SUMMARY OF ABOUMENT

Holding that Section 10 (a) of the Labor Management Relations Act of 1947 superseded state court jurisdiction to adjudicate private rights under valid state law, the Supreme Court of Pennsylvania reversed a permanent injunction against picketing for the purpose of coercing an employer to compel its employees to join the picketing union. Under state law that purpose was unlawful and the concerted activity harming the employer was a tort transgressing the employer's private rights. At the same time Section 8(b)(2) empowered the National Labor Relations Board to prevent the same conduct for the public purpose of protecting the free flow of interstate commerce.

Solution of this far-reaching problem of accommodation between state judicial and national legislative jurisdiction calls for careful analysis of four questions of construction of the Labor Management Relations Act presented in the following order. Did Congress (1) withhold consent, (II) enter the field, (III) occupy the field or (IV) promulgate contrary policy? Negative answers reversily call for reversal in this case.

CONSENT

I. The Congress intended and consented that such state court jurisdiction continue. Section 10 (a), in the light of legislative history of the Labor Manage ment Relations Act, expressed that intent and consent of Congress when it added its equalizing amendments as a maximum ceiling in the national interest—the sky was no longer the limit—for certain nationally conspicuous unfair labor practices by labor organizations. Congress abhorred a vacuum. Congress realized only too beenly the limits of effective federal action. In Section 10 (a) Congress expressed its consent in four ways:

A. In the second sentence of Section 10 (a), Congress recognized "any other means" of adjustment or prevention, subject only to the paramount authority of the National Labor Relations Board. The Conference Committee Report shows that this meant that remedies before the courts were continued and that private remedies were consented to. The debates show that so-called duplication of remedies, urged as an objection to equalizing amendment, was deliberately desired and intended. As Senator Taft stated:

"There is no reason in the world why there should not be two remedies * * *"

B. By the first sentence of Section 19 (a) the Board was "empowered to prevent" unfair practices in the public interest under the Brundeis construction in Kleener of similar language in the Federal Trade Commission Act on which this legislation was purposely patterned and, as National Licorice confirms, the field of private rights was not entered.

C. Following the first two sentences of Section 10 (a), the clarifying provise, unanimously

introduced by the Senate Committee ten days after the Bethlehem case at the instance of the New York State Labor Relations Board (to harmonize its existing practice and understanding with the National Labor Relations Board with overtones in the opinion) by its nature, purpose and language, for ceding or conceding by agreement with a state agency of jurisdiction on an industry-wide basis over representation as well as unfair labor practice cases subject to a lunitation limited to state statute, in its very delimiting detail, recognized the continuing jurisdiction of state courts under consistent state lav. common law as well as statute law. Congress never dreamed of a wholly unnecessary ceding to state courts of a jurisdiction to adjudicate private rights which Congress had not so much as delegated to the National Labor Relations Board itself.

D. From Section 10 (a) Congress deleted the word "exclusive" theretofore descriptive of the Board's jurisdiction, such as it was, as it refushioned that section in cautious harmony with its deliberate intention, made plain in the debates and in the Conference Report, in adding equalizing national public remedies not displacing the unreplaced and irreplacable state judicial jurisdiction.

No ENTRY

II. Congress, in addition to expressing in Section 10(a) its consent, has not entered any of the multitudinous, varied fields of state court jurisdiction of

private rights. Congress delegated to the National Labor Relations Board, as to the Federal Trade Commission under prior similar statutory language intentionally followed, no jurisdiction to adjudicate private rights, as cases such as Klesner and the second Consolidated Edison cases have demonstrated. Indeed it is for this very reason, i.e., that Congress created . new public rights appropriately implemented by a discretionary public remedy, that the state courts, and indeed the federal district courts, as Gerry of California and Amazon have decisively decided, have no implied jurisdiction to enforce such public rights. That situation presents an entirely different question from the present problem of state court jurisdiction under state law, as California itself has recently made clear in Sommer, expressly distinguishing Gerry of California. With Sommer, the great weight of authority (Pennsylvania standing here almost alone) sustains state court jurisdiction under valid state law to adjudicate private rights. Congress has not considered the perplexing problems as to where the lines would be drawn, as they would have to be, if there were some supersedure of state court jurisdiction. has not entered such fields. This follows a fortiori from Allen-Bradley, Wisconsin Auto Workers, and Algoma, where the states remained free even through state labor relation, boards exercising a wide discretionary administrative authority in fashioring public remedies -to proscribe wrongs between employer and employee which Congress had not outlawed or pre-empted when it limited the jurisdiction of the National Labor Relations Board to a ceiling on unfair labor practices as listed in Section 8 of the National Labor Relations Act

of 1935 or the Labor Management Relations Act of 1947.

NO OCCUPATION

III. Where, going further, Congress had entered the field, in Consolidated Edison, Bethlehem, La Crosse and Plankinton, there remained, as Zook shows so strikingly, the question how far Congress had occupied that field with resultant exclusion of state power. Bethlehem, reaffirmed in La Crosse and applied in Plankinton, recognized in its pertinent classification of cases the various degrees of effective congressional possession of a field once entered and found that real potentials of conflict, created by somewhat conflicting standards, by the broad discretion in policy making and fashioning of remedies and by the impact of informal administrative practice, precluded any intrusion by a state labor relations board in the china shop of the National Labor Relations Board. No such potentials of conflict exist in the case of state courts confined to the molecular activity of applying rules of law in adjudicating rights between private parties in a case or controversy. The functioning of state courts in the administration of justice is of such fundamental importance in our democratic form of government under law that Congress does not lightly interfere therewith. Indeed, it is inconceivable that Congress could pass uniform national legislation capable of adjustment and application to the adjudication of the myriad private rights incident under such varying circumstances to labor or management activities that take place in the . forty-eight states. Here a case-by-case determination of federal supremacy is permissible and, in the wisdom

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of Congress, mandatory. In the unlikely event of conflict in remedies the power of the National Labor Relations Board is paramount and would, of course be recognized by the judges in the states. The National Labor Relations Board, which can adequately protect its paramount power in the unlikely event of conflict, has not acted in this case and no real potentials of conflict preclude a case-by-case test of federal supremacy, even if this field traditionally cultivated by state courts had been entered by Congress.

No CONTRARY POLICY

IV. While Congress has chosen to circumscribe its regulation, and a state court is outsid, that limited field in adjudicating private rights, nevertheless the state court cannot apply state law contrary to basic rights guaranteed by the Labor Management Relations Act. Hill, O'Brien and Amalgamated struck down state statutes that (1) frustrated the collective bargaining Congress authorized, and (2) regulated, or even abrogated the "freedom to strike" for the lawful purpose of "improvement of wages, hours and working conditions" that Senator Taft in an authoritative statement of Congressional intention said:

"We recognize * * * "

The public policy of Pennsylvania, however, is expressed in the section of its little Wagner Act identical with Section 7 of the National Labor Relations Act of 1935, implicitly recognizing, as construed by the Pennsylvania Supreme Court and the National Labor Relations Board the "right to refrain" codified by express language, as Senator Taft has explained, in the

Fadditional language expressly placed in Section 7 in the Labor Management Relations Act. The Pennsylvania statute, within the meaning of Article VI, is clearly not contrary, and no rights guaranteed by the Labor Management Relations Act were impaired. One of the fundamental objectives of the Labor Management Relations Act is to encourage collective bargaining between employers and unions representing free, uncoerced majorities of the employees, election procedure for selecting employees' representatives has been provided, and picketing to coerce employees, whether directly or through their employer as here, into a choice of representatives, violates a fundamental policy of the Labor Management Relations Act and is not designated by Congress as a protected activity. Congress had no intention of warming up an immunity bath for organization from the top (see Appendix B), outlawed such coercive conduct in its Section 8(b) (2) equalizing amendment and, recognizing the limits of effective federal action, intended and consented that state courts continue to adjudicate private rights of an employer harmed by such tortious concerted activity.

Therefore, in this case, the state court had jurisdiction to adjudicate under valid state law precious private rights preserved by Congress.

POINT I

CONGRESS EXPRESSED ITS INTENTION NOT TO SUPERSEDE STATE COURT JURISDIC-TION

When it added in Section 8(b) its outlawry of unfair labor practices which the National Labor Relations Board under Section 10(a) was empowered to prevent, Congress expressed its intention that state court jurisdiction continue under state law. The intention of Congress as to the effect its legislation under the Commerce Clause shall have in redefining the areas of local and national predominance is (R.232a) the test of decision: California v. Zook, 336 U.S. 725, 728-729, 740, 749,

In ten cases the Supreme court has considered some of the problems of construction prerequisite to a determination of the impact on various exercises of state power over labor relations of the National Labor Relations Act and the Labor Management Relations Act: Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 223-224, 245; Allen-Bradley, Local No. 1111 v. Wisconsin Employment Relations Board, 315 U.S. 740, 747, 748-749, 750, 751; Hill v. Florida, 325 U.S. 538, 542, 545, 559, 560; Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 775, 776, 778, 779; La Crosse Telephone Corp. v. Wisconsin Labor Relations Board, 336 U.S. 18, 20; International Union, etc. v. Wisconsin Employment Relations Board, 336 U.S. 245, 252, 263, 266-267, 270; Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations, Board, 336 U.S. 301, 305, 306, 307, 326; Plankinton Packing Co. v. Wisconsin Employment Relations Board, 338 U.S. 953; International Union, etc. v. O'Brien, 339

The very purpose of these equalizing amendments to the National Labor Relations Act of 1935 by the Labor Management Relations Act of 1947 to make pos-

U.S. 454, 457, 458; Amalgamated, etc. v. Wisconsin Employment Relations Board, 340 U.S. 383, 395-396, 398, 403, 405. These cases, on their facts and by their language have consistently drawn the line between federal and state power, in the light of such federal labor legislation, far short of pre-empting the jurisdiction of state courts to decide private rights under state law and recognize that the intention of Congress in this regard is controlling.

In determining whether Congress has entered the field in issue, the presumption is in favor of the state and the intention of Congress to exclude the state power that may be exercised in the absence of congressional action must be clearly manifested; Missouri K. & T. R. Co. v. Haber, 169 U.S. 613, 624 (liability in civil action for damages "a subject about which the animal industry act did not make any provision"); Savage v. Jones, 225 U.S. 501, 532 (in preventing falsity in statements when made, by the Pure Food and Drugs Act "Congress has " " not included that at which Indiana aims' i.e., affirmative disclosure of ingredients); Atchison, T. & S. F. Rv. Co. v. Railroad Commission, 283 U.S. 1'90, 391-392 ("Congress had given to the Interstate Commerce Commission no power to require the building of such a union . terminal as that projected"); Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, 315 U.S. 740, 749 ("Congress has not made such employee and union conduct as is involved in this case subject to regulation by the federal Board''); International Union, etc. v. Wisconsin Employment Relations Board, 336 U.S. 245, 254 ("the federal Board has no authority either to investigate, approve or forbid the union conduct in question"). The field in issue, which we have noted in connection with each of these illustrative cases, had not been entered by Congress under the familiar principle applied in each case that in cases of concurrent power over commerce state jurisdiction remains effective so long as Congress has not manifested an unambiguous, purpose that it should be superseded. Once it is determined, however, that Congress has clearly entered the particular field in which a state asserts concurrent power, a second question arises as to the extent to which Congress has occupied that field, and

sible the "elimination" of "concerted activities which impair the interest of the public in the free flow of

on that second issue, as we read the cases, and as the Supreme Court may now be prepared to declare, the presumption is against state power: McDermott v. Wisconsin, 228 U.S. 115, 130, 133 ("branding upon the package . . is the subject-matter of regulation. * * * under the state law * * * labels * * * for the determination of the correctness of which Congress has provided efficient means, shall be removed . . to permit such regulation • • * is • • to destroy rights arising out of the Federal statute"); Charleston & W. C. R. Co. v. Varnville Furniture Co., 237 U.S. 597, 603 (" 'policies of particular states upon the subject of the carrier's liability for loss or damage to interstate shipments. * * have been superseded.' * * It overlaps the Federal act in respect of the subject"); Hines v. Davidowitz, 312 U.S. 52, 61 ("subject of the state and federal laws is identical registration of aliens as a distinct group"); Cloverleaf Butter Co. v. Patterson, 315 U.S. 148, 167-168 ("Congress undertook to regulate the production . . once the material was definitely marked for Steel Co. v. New York State Labor Relations Board, 330 U.S. 767. 773-774, 775 (classifying the cases on degrees of occupancy of an entered field applicable where "both governments have laid hold of the same relationship for regulation . • two administrative bodies are asserting a discretionary control over the same subject matter'+; La Crosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U.S. 18, 25 ("state and " * federal statutes * * * laid hold of the same relationship and * * * provided different standards for its regulation"); although this presumption may be overcome in an area "imbued with the state's interest" as in California v. Zook, 336 U.S. 725, 732, where Mr. Justice Burton, with whom Mr. Justice Douglas and Mr. Justice Jackson joined, dissenting, clearly placed upon the state "the burden of overcoming the supremacy of the federal law in that field * * *", at page 749, which Congress had entered.

When Congress clearly expresses its intention, either way, it is unnecessary to invoke presumptions based upon experience, and the words of the statute or the legislative history are decisive, as in the unanimous decision in Allen-Bradley Local No. 1111 v. Wisconsin

* * commerce" is declared in Section 1, 61 Stat. 136, 137, 29 U.S.C.A. pocket part, Section 151.

As we turn to Section 10(a) of the Labor Management Relations Act and legislative history for evidence that Congress has clearly manifested an exclusion of the state judicial power here in issue, we find that it has not. On the copyrary, Congress has expressed its intention, or consent, that state court jurisdiction continue to adjudicate under state law private rights in an area as imbued with the state's interest as this one. In Section 10(a) Congress has expressed its controlling intention in the two sentences and the proviso which now constitute Section 10(a) as well as by its deletion of the word "exclusive" which had appeared in the corresponding section of the National Labor Relations Act. The congressional intent therefore lends itself to a convenient fourfold exposition focused upon (A) "any other means" in the second sentence of Section 10(a), (B) "Poard is empowered" in the first sentence. (C) "cede to such agencies in the clarifying proviso,

Employment Relations Board, 315 U.S. 740, 748-749 and footnote 7: See Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board, 336 U.S. 301, 307-310, 312, 326. So here the applicable presumption in favor of state jurisdiction is in harmony with the centrolling clearly expressed intention of Congress found in Section 10(a) and the legislative history.

^{*}Helpful over-all studies of this federal labor legislation and the various problems of pre-emption it presents include Cox and Seidman; Federalism and Labor Relations, 64 Harvard Law Review, 211-245, Smith, The Taft-Hartley Act and State Jurisdiction over Labor Relations, 46 Michigan Law Review 593-624, and Petro, Participation by the States in the Enforcement and Development of National Labor Policy, New York University Fifth Annual Conference on Labor, 1-76.

and (D) the deletion of "exclusive," and in their alphabetical order we proceed to analyze these four expressions of congressional intention in the light of their legislative history.

A.

Any Other Means

Congress in the second sentence of Section 10(a) of the Labor Management Relations Act explicitly recognized the existence of "other" remedies and thereby expressed its intention that the power of the National Labor Relations Board under Section 10 should not affect the availability to private persons of remedies they might have, in respect to the very same activities, before state courts under state law. The intention of Congress is expressed in its very broad reference to "any other means" and in the legislative history. In the House Conference Report No. 510 on H.R. 3020 of June 3, 1947, at pages 52 and 57, 93 Cong. Rec. 6376, 6377, conveniently reprinted in Legislative History of the Labor Management Relations Act, 1947, 556, 561, it is stated that:

"The conference agreement adopts the provisions of the Senate amendment. By retaining the language which provides the Board's powers under section 10 shall not be affected by other means of adjustments, the conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in

lieu of, other remedies. * * * The conference agreement adopts the procedure of the Senate amendment. The power of the Board under this provision will not affect the availability to private persons of any other remedies they might have in respect to such activities."

Commenting on this legislative history, in Amazon Cotton Mill Co. v. Textile Workers, etc., 167 F. 2d 183, 187, where it was held that a new private remedy by injunction contrary to the Norris-LaGuardia Act was not created in the federal district courts, the word "when" in the conference report implying pre-existence and not an act of creation, Circuit Judge Parker (referring to the third from last sentence as hereinabove quoted) said:

"The last sentence of the quotation does not mean, of course, that a general remedy in the courts was being given by the act, but merely that an option existed where a remedy in the courts was given by the act, or existed otherwise."

Here the remedy before the Pennsylvania state court "existed otherwise."

This important language, thus employed by the Congress to recognize other remedies before the courts that continued to be available to private parties, had been omitted in the House Bill as reported, as passed by the House and as explained in that same paragraph of the conference report: 93 Cong. Rec. 6376, Legislative History, etc., pages 36, 193, 556. The House Bill not only omitted that language but expressly made the power of the Board "exclusive". In that very different posture of the then much broader bill, when it used the

word "exclusive" and eliminated reference to "any other means", exactly the reverse of the law as finally enacted, House Report No. 245 of April 11, 1947, on H.R. 3020, Legislative History, etc., pages 330-331, referred to congressional repudiation, intended to bind the states, of foremen bargaining units and to the rule of exclusive jurisdiction developed by the Supreme Court.

The conference agreement, while in effect making exclusive in Section 14(a) certain provisions as to supervisors, rejected the broad sweep of the House Bill and its "exclusive" language, and on the contrary adopted the provisions of the Senate amendment expressly stating that the Board's powers under Section 10 should not be affected by any other means of adjustment, Congress thus making clear that Section 10 would not affect the availability to private persons of any remedies they reight have in respect to such prescribed activities before state courts under state laws.

The explicit language in the second sentence of Section 10(a) recognizing other remedies gives effect to the intention of Congress not only as expressed in the conference report but also in significant Senate debate. Senator Taft, on the opening and the closing days of extended debate on the amendment that became Section 8(b) (1), 93 Cong. Rec. 4024, 4437, Legislative History, etc., pages 1031 and 1208, stated that:

"There is no reason in the world why there should not be two remedies * * * An injunction ought to be issued to prevent such a procedure.

* * The bill does not in any way change the right of the Federal court to issue an injunction. The

Senator is suggesting that the enactment of this proposed legislation will bring about a condition which will compel the local court to do its duty. If that will be the result, I believe it will be a beneficial effect. * * the measure may be duplicating the remedy existing under State law. But mat, in my opinion, is no valid argument."

Opposition to the amendment rallied throughout, 93 Cong. Rec. 409, Legislative History, etc., 1021, compare 1031, around a statement made by the National Labor Relations Board that:

"... the enactment of this provision would make unions liable twice for the same offense, once under State and once under Federal law."

The opposition stressed cases of physical violence which were clearly illegal under the laws in every state. Senators Taft, Ball and Ellender pointed out that the amen ment went far beyond physical violence, as did other committee amendments relating to secondary boycotts and jurisdictional strikes. Senator Taft (Lepislative History, etc., at pages 1029, 1030 and 1032, 93 Cong. Rec. 4023, 4024, 4025) referred to coercion by threat of strike, as in the case of Hall Freight Lines., Inc., 65 N.L.R.B. 397, to the economic pressure of picketing for organization from the top and to mass picketing, saying:

"Sometimes the union has not even gotten into the plant when they begin to coerce employees of the plant.

"We had a case last year where a union went to a plant in California and said, 'We want to organize your employees. Call them in and tell them to join our union.' The employer said, 'We have not any control over our employees. We cannot tell them, under the National Labor Relations Act.' They said, 'If you don't, we will picket your plant'; and they did picket it, and closed it down for a couple of months ' ' the amendment ' has been used in Wisconsin as a means not only of preventing the coercion of employees but also of attempting, bringing such action as can be brought by administrative law, to end many picketing. Of course, if administrative law fails it would be necessary finally to resort to the police powers of the States."

Senator Ellender (Legislative History, etc., at page 1056, 93 Cong. Rec. 4132) cited as another glaring example a secondary boycott in a California cannery case of 1946 where:

"While the election was pending, A.F.L. teamsters demanded a closed shop as the price of transporting produce from farm to cannery."

In order to curtail losses, the canneries were forced to enter into a contract with the A.F.L."

Senator Ball (93 Cong. Rec. 4017, Legislative History, etc., 1020) referred to an Oklahoma case in 1947 where:

**... a local judge * * * found the Teamsters * * guilty of contempt of court for picketing an establishment although no members of the union were employed there, in an effort to coerce those who were employed there into joining a union which they did not want to join."

Senator Morse rejoined (93 Cong. Rec. 4430 Legislative Histor), etc., at page 1195) that:

contempt of court for picketing an establishment in an affort to coerce employees into joining the union. If such activity constitutes a violation of State law, as it apparently did in the case cited, there seems to be no occasion for adopting the amendment, and thus requiring the N.L.R.B. to correct the same abuse."

Senator Ball, on the closing day of debate on the amendment introduced by him with the support of Senator Taft and other members of the Committee, summarized the prevailing view that it would be well to encourage more state remedies and (93 Cong. Rec. 4432-4433, Legislative History, etc., at page 1200) said:

"So it may well be that many of the types of activities of unions which we are seeking to restrain somewhat by this mild amendment are the kind of activities which would be corrected by good local law enforcement. But I think we shall encourage that kind of local law enforcement if the Federal Government, acting through Congress states clearly its position that individual employees are entitled to their right of self-organization free from esercion from any source, whether it be the employer, the union, or some outside source."

In the closing argument in favor of the amendment, which was adopted, Senator Taft (99 Cong. Rec. 4437, Legislative History, etc., at page 1208) stated that:

"I wish to point out that the provisions agreed to by the committee covering unfair labor practices on the part of labor unions also * * * may be duplicating the remedy existing under State law."

As set forth in Senete Report No. 105 on S. 1126, Supplemental Views of Senators Taft and Ball and other committee members, the views adopted by the Congress, at page 50, Legislative History, etc., page 456,

"The committee heard many instances of union coercion of employees." Some of these acts are illegal under State law, but we see no reason why this should not also constitute unfair labor practices to be investigated by the National Labor Relations Board, and at least deprive the violators of any protection furnished by the Wagner Act."

The intention that arms conscient under state law continue, and inneed be encouraged by this federal legislation appears even from the course of argument concerning private injunctions in the federal district courts, as conveniently set forth in Legislative History. etc., pages 79-90, 206-204, 395, 397, 561, B.R. 3020 in Section 12 provided for injunctions at the request of private persons against boycotts and other described unlawful concerted activities in the federal district courts take from the constitute of the Rocketta Guardia Act. Sases of Teatmater boycons and pickening to organize from the top as well as threats of violence were cited, Legislative History, etc., 658-659, 93 Cong. Rec. 3449-3450, were cited to show a need for such protection by federal law. The opposition had much to say for the Norris-La Guardia Act and against repealing, riddling or undermining it by reinstating, restoring and reviving the federal anti-labor injunction, Legislative History, etc., 638, 650, 655, 660, 664,

680, 691, 707, 710, 720, 722, 724, 728, 791, 795-796, 802, 806, 814, 840, 856, 98 Cong. Rec. 8439, 3444, 8445, 3448, 3449, 3451, 3452, 3625, 3626, 3634, 3536, 3541, 3542, 3543, 3546, 8630, 8632, 3636, 3638, 3642, 3658, 3667. In the Senate, the sentiment in favor of the Norris-La Guardia Act and against the federal labor injunction was so much stronger that the committee blocked any such suggestion for private injunctions in the federal courts and in Senate Report No. 105 on S. 1126, Supplemental Views, pages 54 and 55, Legislative History, etc., 460-461, a minority of four againstors, including Senators Taft and Ball, suggested such direct action only against secondary boycotts and jurisdictional strikes enjoining the entire strike without continuous supervision and contempt charges, saying:

"We do not desire to put the Federal courts into every strike, and therefore we do not propose injunctions against mass picketing or other features which may be alleged in any strike for better wages and working conditions."

When Senator Ball, without the joinder of Senator Taft (93 Cong. Rec. 4757, Legislative History, etc., 1323) offered an amendment to this effect, that amendment was decisively defeated after sharp debate (93 Cong. Rec. 4757-4770, 4834-4847, Legislative History. etc., at pages 1323 to 1370) summarized in Senator Taft's declaration (93 Cong. Rec. 4843, Legislative History, etc., at page 1365) that:

"I found that opposition to restoring the injunctive process even in cases of secondary boycotts and jurisdictional strikes " " so strong.

* * that I have determined that I shall vote against the Ball amendment * * * * * *

against the Ball amendment

In this debate as to amending the Norris-La Guardia

Act to restore private injunctions in the federal courts
no one questioned the continuing availability of state
court injunctive relief under state law, as indicated in
the following colloquy (93 Cong. Rec. 4838, Legislative
History, etc., at page 1355):

"Mr. McClellan. Under the present law, what protection has a farmer, when a boycott interferes with the transportation of his products; which possibly are highly perishable?

"Mr. Ball. He has none, unless there is a State law which would protect him."

Senator Morse buttressed the arguments against restoring abuses of federal labor injunctions with a similar recognition of continuing state court jurisdiction under state law (93 Cong. Rec. 4840, Legislative History, etc., at page 1359), saying:

"Furthermore, let us recall again the fact that as of today, under our State laws, those who are harmed by unions have the right to go into court and sue if they can bring proof that they have been damaged by the action of unions or of a union."

Accordingly, even in the spirited argument against federal labor injunctions, there was no proposal, or expression of intention, to limit state court injunctions or other remedies under state law. The continuance of state court jurisdiction was clearly recognized.

^{*}It may be noted that it was not until several years later, when the party balance of power in the Senate had changed, that

A further expression of congressional intention, from both sides of the aisle, in the 80th Congress, 1st Session, as to continuance of state court jurisdiction under the Labor-Management Relations Act appears in the brief debate (93 Cong. Rec. 4860-4868, Legislative History, etc., pages 1375 to 1389) on Senator Akien's amendment to provide for issuance of federal court injunctions at the instance of private parties where labor disputes interfered with the marketing of perishable commodities. The following colloquy between Senators Pepper and Wherry clearly recognizes the continuance of state court injunctive jurisdiction under state law (93 Cong. Rec. 4863, Legislative History, etc., at pages 1379 and 1380):

"Mr. Pepper. I am not sure but that the local citizen, the Senator from Nebraska describes, would have the right of injunctive relief in a local court. We are simply giving the right in a Federal

an investigation was instituted of labor injunctions in state courts, and Senator Murray, on February 8, 1951, presented a report, ordered to be printed (Senate Document No. 7, 82nd Congress, lst Session) of the sub-committee on labor-management relations entitled State Court Injunctions. After that investigation a staff report to the sub-committee on labor-management relations, 82nd Congress, 2nd Session, simply suggested three principal remedies, that Congress should prescribe procedural rules such as those in the Norris-LaGuardia Act for state court injunction cases involving enterprises affecting interstate commerce, or that Congress should exclude all state court actions in labor disputes affecting interstate commerce or, preferably, that self-restraint on the part of state courts was the most promising cure for the improper use of labor injunctions. Congress has thus far adhered to the third alternative. That state courts have made invaluable contributions to a balanced federal system was recognized in that staff report on State Labor Injunctions and Federal Law.

court, but he still has local machinery of which he may avail himself to prevent irreparable damage, if he can make a showing. It seems to me this would bring the matter into Federal jurisdiction.

Mr. Wherry. I agree that there are remedies in every State, but we are passing a Federal law, to give injunctive relief.

"Mr. Pepper. The Senator would probably find the circuit judge closer than the Federal judge in most States, and I suggest a man would have a complete and adequate remedy in the local courts."

The debate overwhelmingly supports the congressional intention to continue state court remedies under state law. The very fact that the House Bill provision for private federal court injunctive relief was eliminated in conference makes it even plainer that, in finally maintaining the status quo as to the Norris-La Guardia Act in the federal courts, the Congress likewise maintained the status quo as to the state courts. House Conference Report No. 510 on H.R. 3020, at page 57, Legislative History, etc., 561, 93 Cong. Rec. 6377, buts plainly the Congressional insistence on a state court remedy that was even stronger when the House yielded its demand for private injunctions in the federal courts, the report saying:

"As stated above, the House bill, in section 12, provided for injunctions at the request of private persons, rather than by the Board, in cases like these. The conference agreement adopts the procedure of the Senate amendment. The power of the Board under this provision will not affect the

availability to private persons of any other remedies they might have in respect to such activities."

The congressional intention so overwhelmingly evidenced in the debates, conference reports, and legislative history, that state court jurisdiction under state law be continued, was thus expressed by the Congress in the language of the second sentence of Section 10(11) providing that the Board's powers shall not be affected by other means of adjustment or prevention. When the courts exercise jurisdiction they don't limit the Board or affect its power, but in saying that Congress said that state courts have jurisdiction.

B.

Board Is Empowered

The intention of Congress in Section 10(a) that state courts continue to adjudicate private rights under state law is further expressed in the first sentence providing that:

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce."

The word "empowered" is derived from Section 5 of the Federal Trade Commission Act of September 26, 1914, 38 Stat. 719, 44 U.S.C.A., Section 45. Under that prior act, in Federal Trade Commission v. Klesner, 280 U.S. 19, 25, speaking through Mr. Justice Brandeis, the Supreme Court pointed out that the commission had broad discretion to refuse to institute a complaint against an alleged wrongdoor engaged in an unfair practice, and said:

"Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrong."

The same construction was accordingly given to the corresponding language in the National Labor Relations Act in Amalgamated, etc. v. Consolidated Edison Co., 309 U.S. 261, 267-268, and in National Licorice Co. v. National Labor Relations Board, 309 U.S. 350, 362. As restated in the National Licorice Company case,

"The proceeding authorized to be taken by the Board under the National Labor Relations Act is not for the adjudication of private rights."

Federal Trade Commission v. Klesner, 280 U.S. 19 * * * "

Under Section 10(a) of the National Labor Relations Act the National Labor Relations Board exercised a broad discretion, with the approval of the Supreme Court, see National Labor Relations Board v. Indiana & Michigan Electric Co., 318 U.S. 9, 18, and footnote 8, under the statutory language "empowering" it to remedy unfair labor practices, to decline to act in cases where in its judgment the public interest did not warrant its assumption of jurisdiction. The Board's broad discretion in the matter of jurisdiction continued under the Labor Management Relations Act wherein Congress, fully aware of the Board's practice continued the same language that the Board was "empowered": Sixteenth Annual Report of the National Labor Relations Board, pages 256 and 257 and cases cited. The

enunciation by the Board of standards defining areas in which it will and will not exercise jurisdiction has more recently been referred to by the Supreme Court in National Labor Relations Board v. Denver Building & Construction Trades Council, 341 U.S. 675, footnote 14, with a statement (at page 684) that:

"Even when the effect of activities on interstate commerce is sufficient to enable the Board to take jurisdiction of a complaint, the Board sometimes properly declines to do so, stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in that case."

In short, as restated in Haleston Drug Stores, Inc. v. Nutional Labor Relations Board, 187 F. 2d 418, 420, certiorari denied, 342 U.S. 815:

"The courts have uniformly recognized that the National Labor Relations Act did not confer private rights, but granted only rights in the interest of the public to be protected by a procedure solely to public ends. The proceeding authorized to be taken by the Board was not for the adjudication or vindication of private rights. * *

"By the express language of § 10(a) the Board was and still is *empowered* (not directed) to prevent persons from engaging in unfair labor practices affecting commerce."

Should the National Labor Relations Board exercise its discretion to decline jurisdiction in certain types of cases, the reasoning and the decision in Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 776, where this "different

problem" was left open, may not preclude the exercise of jurisdiction under state law even by a state labor relations board in the exercise of its equally broad discretion to fashion remedies for the vindication of public rights.

However that may be, under that same decision and its elaborate statement of principles, Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 773, Congress has left outside the scope of its delegation the adjudication of private rights, thus clearly permitting exercise by the states of their judicial power. Congress has made clear, by its carefully-chosen language that the Board is "empowered" to prevent certain unfair labor practices affecting commerce, that it limited the National Labor Relations Board to protection of public rights by a procedure looking solely to public ends and intended that state courts continue to adjudicate private rights under valid state law.

0

Cede To Such Agency

That state court adjudication of private rights under state law, whether common law or statute law, was outside of the scope of the Labor-Management Relations Act is further evidenced by the manifestations of congressional intention in the proviso to Section 10(a) empowering the National Labor Relations Board to cede to a state "agency", on an industry-wide basis for determination under a state "statute" consistent with the corresponding provisions of the

federal act, jurisdiction over any cases. This clarifying proviso as to state labor relation is board jurisdiction in administering public remedies, in view of its legislative history and purpose and detailed language makes it plain that the Congress was not dealing with state court jurisdiction because it had not dealt with adjudication of private rights and had at no time intended to affect continuing state court jurisdiction under state law.

- (1) The purpose and legislative history of this clarifying proviso is simple and plain. It confirms the general rule that it is ordinarily contrary to the nature of a proviso to enlarge or extend the operation of a statute: See Savage v. Jones, 225 U.S. 501, 533, infra. This proviso aptly illustrates the statement in Mc-Donald v. United States, 279 U.S. 12, 21, that
 - "" a proviso is not always limited in its effect to the part of the enactment with which it is immediately associated; it may apply generally to all cases within the meaning of the language used. " Sometimes it is used merely to safeguard against misinterpretation " ""

The purpose of the proviso is set forth in the Senate Report, the Senate Minority Report and the Conference Report, Legislative History, etc., 432, 500, 556. Senate Report No./105 on S. 1126, at page 26, stated:

"Section 10(a): The proviso which has been added to this subsection permits the National Board to allow State labor-relations boards to take final jurisdiction of cases in border-line industries (i.e., border-line insofar as interstate com-

merce is concerned), provided the State statute conforms to national policy."

Senate Minority Report No. 105, at page 38, states:

"Section 10(a) adds a proviso to the present act empowering the Board to concede to any agency for (sic) any State or Territory jurisdiction over any cases not predominantly national in character even though such cases involve an effect upon interstate commerce. We agree with the majority that it is desirable thus to clarify the relations between the National Labor Relations Board and various agencies which States have set up to handle-similar problems. This proposal is made necessary by the decision of the Supreme Court in Allegheny Ludlum Steel Corp. v. William J. Kelley and H. M. Myron Lewis, etc., decided on April 7, 1947."

House Conference Report No. 510, on H. R. 3020, at page 53, 93 Cong. Rec. 6376 paraphrasing in part the language of the proviso, stated:

"The Senate amendment contained a proviso at the end of section 10(a) authorizing the Board to cede jurisdiction over any cases in any industry to State and Territorial agencies * * The House bill contained no provision corresponding with the proviso of section 10(a) of the Senate amendment. The conference agreement adopts this proviso."

The Supreme Court in Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board, 336 U.S. 301, 313, referred to the

"* * purpose of the proviso * * * to meet situations made possible by Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767 * * * where no State agency would be free to take jurisdiction of cases over which the National Board had declined jurisdiction."

The proviso, enacted substantially as introduced in the Senate ten days after the Bethlehem decision, was designed to carry out solely its limited function of clarifying the law, supporting the separate opinion of Mr. Justice Frankfurter (in which Mr. Justice Murphy and Mr. Justice Rutledge joined) and removing any doubt as to the legality of the agreement or general understanding, set forth as an appendix to that separate opinion, 330 U.S. 767, 784-797, between the National Labor Relations Board and the New York State Labor Relations Board. In that Appendix, at page 789, footnote 1, it was suggested that:

"The National Act contains no provision authorizing the National Board to enter into compacts or agreements with State Boards, but would seem to require the National Board in each case to exercise its discretion whether or not to proceed."

In Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 776, the court had refrained from passing, in its decision relating to recognition of foreman bargaining units, on the legal effect of the understandings between the National and State Boards, saying:

"The National and State Boards have made a commendable effort to avoid conflicts in this over-

lapping state of the statute. * * * the National Board made no concession or delegation of power to deal with this subject."

The very next month after the Bethlehem decision, the National and New York Boards decided to continue on the basis of their existing understandings. The members of the National Labor Relations Board filed, 12 Federal Register 3443, a statement of May 22, 1947, that:

- "(a) In the opinion of both Boards, there is nothing in the decision " " of " " April 7, 1947, forbidding or disapproving such collaborative arrangements as are contained in the existing understanding " " set forth in the appendix to the separate opinion of Mr. Justice Frankfurter " "
- "(b) The existing understanding shall be continued in full force and effect * * *"

The language of the proviso is limited to the field of its purpose, impaired only by a slight change in conference of the limitation as to consistent state law. As reported and passed in the Senate, Legislative History, etc., pages 123 and 252, the concluding limitation in the proviso read:

"" * provided the State agency conforms to national policy, as herein defined, in the determination of such disputes."

The Conference Report No. 510, at page 12 (93 Cong. Rec. 6364), Legislative History, etc. page 516, recast this limitation to read, as it appears in the Labor-Management Relations Act:

"" * " unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

Whatever the intended purposes in that change of language, it did not result in amendments by the New York Legislature bringing its state statute, modeled on the National Labor Relations Act of 1935, more closely in line with the changes embodied in the Labor Management Relations Act of 1947. After that limitation was added in conference, the clarifying proviso was sapped of vitality and the contemplated agreements with state labor relations boards were not consummated.

"It does not exempt from its jurisdiction all who are subject to the National Act but only those as to whom the employer and the Board agree are subject to the National act."

The Senate Minority Report No. 105 at page 38 raised no objection to this power of " * * the Board to concede * * * to clarify the

The conference committee made one other change, without any intended change in meaning, of a feature of the amendment at introduced and passed in the Senate that dar-marked its New York State Labor Relations Board origin and purpose. S. 1126, as reported, and passed by the Senate, Legislative History, etc., 128, 251, empowered the National Board by agreement with any state agency to concede to such agency introdiction, and that word "concede" harmonised perfectly with the central idea of an agreement clarifying jurisdiction in accordance with New York usage. The word "concede" had been used in the New York State Labor Relations Act in seeking to avoid a clash with federal authority, Consolidated Edison Co. v. National Labor Belations Board, 305 U.S. 197, 223, and as this carefully chosen wording was construed in Davega City Radio v. State Labor Relations Board, 281 N.Y. 13, 22 N.E. 2d 145, 149,

An adumbration of what was intended appears in the agreement of August 10, 1945, etc., between the National Labor Relations Board and the Puerto Rico Labor Relations Board, 12 Federal Register 7902; in 1947 the Territorial Board continued to exercise jurisdiction over all cases in designated industries or enterprises, and the National Labor Relations Board, on October 24, 1947, stated that in the Labor Management Relations Act:

that State and Territorial agencies designed for the purpose of disposing of matters concerning representation and labor disputes be encouraged to continue in their assigned functions over matters purely local in character."

The provise speaks in terms of an "agreement" with any "agency" or state labor relations board as the word agency indicates and the Senate said it meant: Senate Report No. 105 at p. 26, Legislative History, etc. 432. The provise speaks in terms of industry-wide jurisdiction. The provise speaks only of a state statute as applicable, since state labor relations boards were wholly creatures of statute, and said nothing as to the common law as well as statute law which state courts traditionally applied. The provise speaks of inconsistency with the corresponding provision of the Labor Management Relations Act, which

relations" and the House Conference Report No. 510 at page 52 indicated no shift in meaning from concede to cede in restating that the Senate proviso suthorized the board to "cede" jurisdiction. The proviso continued to speak in terms of "agreement with any agency" of any state.

must mean as read in Algoma Rlywood & Venetr Co. v. Wieconsin Employment Belations Board, 386 U.S. 301, 313, that:

"Where the state and federal laws do not overlap, no cession is necessary because the State's jurisdiction is unimpaired."

In every respect, therefore, the language of the proviso, in harmony with its legislative history and purpose, expresses an intention to clarify the law as to jurisdiction of state labor relations boards and expresses the intention of the Congress that the Labor Management Relations Act did not overlap the jurisdiction of state courts to adjudicate private rights under state laws where no cession was necessary or provided for. In any event the National Labor Relations Board could not cede more jurisdiction than it had, it had no jurisdiction over the adjudication of private rights, and by no means was this proviso intended to enlarge the scope of the Labor Management Relations Act or the jurisdiction of the National Labor Relations Board.

There was no debate on this clarifying proviso, and the legislative debates on the Ball amendment,

Similarly, in Savage v. Jones, 225 U.S. 501, 533, the Pure Food and Drugs Act was limited to a condemnation of misbranding and (page 524) it was held that "the statute does not compet a disclosure of formulas or manner of combination." Yet there was a provise (foot of page 531) that generally there need be no disclosure of trade formulas of proprietary foods that contained no unwholesome added ingredient. The court, through Mr. Justice Hughes, said—this provise merely relates to the interpretation of the requirements of the act, and does not enlarge its purview or establish a rule as be matters which he outside its prohibitions."

which became Section 5(b)(1) of the act, introduced on the floor of the Secate after this elarifying proviso was already in the Secate bill, plainly evidences the controlling intention of Congress that state courts, without any excess from or agreement with the National Labor Relations Board, should continue to adjudicate private rights under valid state law.

Deletion of Exclusive

The Congress expressed its intention, as to not excluding state court jurisdiction, not only by employing the language that it did use in Section IO(a) of the Labor-Management Relations Act, as we have seen, but also by deleting the language which the National Labor Relations Act had employed describing the National Labor Relations Board's power up to 1947, as exclusive. This change is in striking contrast to the converse change that was made in the United States Warehouse Act in 1931 when Congress added, with the broad effect found in Rice v. Santa Fe Elevator Corporation, 331 U.S. 218, 223, the mandatory words that the power, jurisdiction and authority of the Secretary of Agriculture "shall be exclusive." Here the word "exclusive" had been used in the National Labor Relations Act of 1935, as noted in many decisions thereunder, to characterize the power of the National Labor Relations Board, but the Labor Management Relations Act deleted the word "exclusive".

Even when the Congress in 1935 had described the power of the National Labor Relations Board as exclusive, it expressed no intention to touch the field of state court adjudication of private rights under state laws; it intended by this provision to make the jurisdiction of the board exclusive, primarily as against other federal agencies, to enforce the public rights created by the National Labor Relations Act. As Sentor Walsh clearly stated, 79 Cong. Rec. 7661,

"The courts will have in the future all the jurisdiction they have ever had in relation to all the differences which arise between employers and employees " * ""

Senator Wagner, 79 Cong. Rec. 7654 recognized the continued availability of

" * injunctions * " issued by the thousands by courts all over the country"

and based on that fact his contrasting argument that

"There is no remedy today, however, when an employer uses his economic pressure to compel a worker to join a particular organization or not to join a particular organization."

It was never supposed that the National Labor Relations Board, with "powers " " modeled upon those of the Federal Trade Commission" as Senator Wagner explained in introducing the bill on February 21, 1935, 79 Cong. Rec. 2372, had any authority to adjudicate private rights or that the powers of state courts would be affected.

The word "exclusive", which was not found in the Federal Trade Commission Act after which this

measure was modeled, was placed in the National Labor Relations Act to make the power of the National Labor Relations Board exclusive within its field where a predecessor Board had been severely limited by the jurisdiction of other federal labor boards: The Wagner Labor Disputes Act, 35 Columbia Law Review 1098, 1114. By presidential orders in January of 1935, while the old National Labor Relations Board was locked in a jurisdictional struggle with the N.R.A., the National Labor Relations Board was deprived of jurisdiction over labor disputes arising in such industries as had independent labor boards. such as the Automobile Labor Board and the elaborate system of industrial relations boards in the bituminous coal industry, authorized to issue final orders: Lorin and Wubnig, Labor Relations Boards (1935) 326-328, 428. On February 21, 1935, before the National Industrial Recovery Act had been held unconstitutional, when Senator Wagner introduced his bill which was later enacted as the National Labor Relations Act of 1935, he specified that the power of the proposed permanent National Labor Relations Board, under Section 10(a) "shall be exclusive", 79 Cong. Rec. 2369, 2371, and explained:

"Finally, the existence of numerous industrial boards whose interpretations of section 7(a) are not subject to the coordinating influence of a supreme National Labor Relations Board, is creating a maze of confusion and contradictions. While there is a different code for each trade, there is only one section 7(a), and no definite law written by Congress can mean something different in each industry."

Specific prevision was made in the bill, Section 16, 79 Cong. Rec. 2371, enacted as Section 14, that whenever the application of the provisions of Section 7(a) of the National Recovery Act conflicted, the National Labor Relations Act should prevail. Mr. Walsh, in submitting the report of the Committee on Education and Labor, Senate Report No. 573, 74th Congress, 1st Sess., on May 2, 1935, at pages 1 and 15, stated, his concluding words being oft quoted, that:

"In view of the impending expiration on June 16, 1935, of the National Industrial Recovery Act, with its fair promise in section 7(a) of promoting industrial peace by the recognition of the rights of employees to organize and bargain collectively, and of Public Resolution 44, Seventy-third Congress, under which the present National Labor Relations Board was created, the time has come for a clean decision either to withdraw that promise or to implement by effective legislation. " "

"Section 10(a) gives the National Labor Relations Board exclusive jurisdiction to prevent and redress unfair labor practices, and, taken in conjunction with section 14, establishes clearly that this bill is paramount over other laws that might touch upon familiar subject matters. Thus it is intended to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining."

Congress manifestly made exclusive the power of the permanent National Labor Relations Board by way of excluding the too-many federal administrative authorities confusing the development of the federal law (the only law) regarding collective bargaining.'

Congress was concerned with reaching the employer who refused to recognize and bargain with representatives of his employees.

Congress made exclusive this new federal power to reach such an employer in this new field where the only law was federal law. Congress made this new power exclusive because of the confusion—when the bill was introduced—resulting from dispersion of federal authority among several federal boards under the N.I.R.A. Congress thus established a single paramount federal administrative authority to make this new law and to develop federal law regarding col-

Twelve years later William Hutcheson, 80th Cong. 1st Sess., House Committee on Education and Labor, Hearings on Amendments to the National Labor Relations Act (1947), Vol. 3, page 1749, vividly recalled that

[&]quot;At one time we had here under the Government, 28 different commissions dealing with labor questions. We had one case * * juggled around * * different * * commissions for over 2 years."

^{*}At that time, as the first chairman of the National Labor Relations Board, J. Warren Madden, Balance in Employer-Employee Law-NLRB as Key, I Lab. Rel. Rep. 305 (1937) stated the situation.

[&]quot;" if an employer refused to recognize and bargain with representatives of his employees there was no law to reach him, though there was plenty of law to reach his employees after they had struck."

lective bargaining where there had been no law to reach the employer.

In using the word "exclusive", under such circumstances, there was no thought of excluding state court adjudication of private rights under state law. There was no state law in the field with which Congress was dealing in the National Labor Relations Act."

Under such circumstances, even more than in California v. Zook, 336 U.S. 841, 847, it would have been

"" * startling to discover congressional intention to 'displace' state laws when there were no state laws to displace when Congress acted."

On the contrary, the intent of Congress, as stated by the responsible committee chairman, Senator Walsh, in debate, 79 Cong. Rec. 7661, supra, was that the courts should have

had." all the jurisdiction they have ever

Practical construction accorded with congressional intention. From 1935 to 1947 state court jurisdiction under state law in connection with labor disputes to

⁹ Madden, Balance in Employer-Employee Law, etc., supra, 1 Lab. Rel. Rep. 305, observed:

[&]quot;Here there was an open field, untouched by existing state laws, which desperately needed to be brought under regulation. * * It [Congress] therefore provided that there should be some law for employers, to accompany the large amount of existing law for employees."

adjudicate private rights was never questioned and was consistently exercised.10

In Allen-Bradley Local No. 1111 etc. v. Wisconsin Employment Relations Board, 315 U.S. 740, 748, footnote 7, the Supreme Court observed that the Committee Reports plainly indicate that the National Labor Relations Act was not a police court measure and quoted from S. Rep. No. 573, 74th Cong., 1st Sess., page 16, the decisive statement that

"The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are not adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest."

Labor injunctions were not excluded. The jurisdiction of state courts was not excluded.

This page of history shows that when Congress deleted the word "exclusive" in the Labor-Management Relations Act, it did not thereby make the public remedies of the National Labor Relations Board any more exclusive of state court jurisdiction. On the

¹⁰ In Milk Wagon Drivers, etc. v. Meadowmoor Dairies, 312 U.S. 287, 299, where it apparently had not been suggested that the National Labor Relations Act excluded state courts, the Supreme Court noted that:

[&]quot;If the people of Illinois desire to withdraw the use of the injunction in labor controversies, the democratic process for legislative reform is at their disposal. " " they choose to leave their courts with the power which they have historically exercised " ""

contrary, as we have seen, Congress was imposing on labor organizations equalizing unfair labor practices that were opposed precisely because they did duplicate state court remedies to the extent that the National Labor Relations Board might prevent the same union conduct, albeit for the sole and different purpose of protecting the free flow of commerce. In consciously creating a so-called double liability, under federal law where state law also applied, Congress carefully deleted the word "exclusive" from excess of caution to preserve beyond question such helpful and indispensable state court jurisdiction.

The legislative history indicates that the word "exclusive" was deliberately omitted in Section 10(a) in S. 1126, as reported on April 17, 1947, and in H. R. 3020, as it passed the Senate on May 13. The Senate at the same time added the clarifying proviso for conceding of jurisdiction by agreement with any state agency. Senate Report No. 105 on S. 1126 page 26, Legislative History, etc., page 432, mentioned just the proviso in discussing Section 10(a). The Senate Minority Report No. 105, page 37, Legislative History, etc., pages 499 and 500, approved the proviso to "clarify the relations" but objected to the deletion of "exclusive" stating:

"Section 10(a) as amended would change the National Labor Relations Act by omitting the present language that 'this power shall be exclusive.' This language was included to make it clear that all unfair labor practices are to be handled solely by the National Labor Relations Board.

No good reason for omitting this provision has been cited to us."

Previously, in the House, as we have noted under Point II-A, the word "exclusive" in Section 10(a) was retained and emphasized at the same time that private labor injunctions were being provided for before federal district courts: House Report No. 245 on H. R. 3020, 40 and 44, Legislative History, etc. 331 and 335. At an early stage of the debate on the floor of the Senate, on April 25, 1947, Senator Murray in opposing the measure as it had been reported, presented as one objection the deletion of the word "exclusive" in describing in Section 10(a) the power of the National Labor Relations Board, and reiterated

"This language was included to make it clear that all unfair labor practices are to be handled solely by the National Labor Relations Board."

Throughout, it occurred to no one that the clarifying proviso for ceding jurisdiction called for the deletion of the word "exclusive". Thus, in the House Conference Report No. 510, at page 52, Legislative Report, etc., 556, the report discusses the proviso as a separate matter without any indication anyone supposed it had any bearing on the deletion of the word "exclusive".

The conference report presents the following independent and complete discussion of the intention of Congress in deleting the word "exclusive":

"The House bill omitted from section 10(a) of the existing law the language providing that

the Board's power to deal with unfair labor practices should not be affected by other means of adjustment or prevention, but it retained the language of the present act which makes the Board's jurisdiction exclusive. The Senate amendment, because of its provisions authorizing temporary injunctions enjoining alleged unfair labor practices and because of its provisions making unions suable, omitted the language giving the Board exclusive jurisdiction of unfair labor practices, but retained that which provides that the Board's power shall not be affected by other means of adjustment or prevention. The conference agreement adopts the provisions of the Senate amendment. By retaining the language which provides the Board's powers under section 10 shall not be affected by other means of adjustment, the conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall. be in addition to, and not in lieu of, other remedies."

It was true that S. 1126 as reported, omitting the word exclusive in Section 10(a), had provided for suits in district courts of the United States for violation of collective bargaining contracts in Section 301 and had authorized temporary injunctions against unfair labor practices in Section 10(g) and (1), Legislative History, etc., 130, 131, 151. In the light of the House Conference Report, therefore, the word "exclusive" was deleted partly because of this jurisdiction given to the federal courts, recognizing that the

word "exclusive" had not been applicable to the state courts."

The Conference Report, at page 57, Legislative History, etc., page 561, 93 Cong. Rec. 6377, expressly refers to the provision authorizing the Board to secure temperary injunctions in the federal district courts enjoining alleged unfair labor practices and states explicitly that:

"The power of the Board under this provision will not affect the availability to private persons of any other remedies they might have in respect to such activities."

Under the circumstances, the deletion of the word, exclusive is significant. The House used the word when it dropped any reference to "other means of adjustment or prevention." The Senate reversed the House and dropped the word at the same time that it used language expressly recognizing any other means of adjustment or prevention. The word exclusive was

¹¹ This may be compared with the situation in Senator Wagner's bill which became the National Labor Relations Act, the bill providing in Section 11, 79 Cong. Rec. 2369, 2370, that, solely at the request of the National Labor Relations Board, the several district courts of the United States were invested with jurisdiction to prevent and restrain any unfair labor practice affecting commerce, and also providing in Section 10(a) with respect to the power of the Board to prevent unfair labor practices that:

[&]quot;This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that have been or may be established by agreement, code, law or otherwise, except as provided in section 11."

Later amendments deleted the exception and the provision for federal district court injunction, 79 Cong. Rec. 7651, 7652.

deleted by a congress which was not only anthorizing certain remedies in the federal courts but was particularly interested in not superseding state court remedies which had been asserted by the opposition as a reason for not imposing a so-called 'double liability'. In the teeth of that opposition, Congress added the, to it, all-important equalizing amendments empowering the National Labor Relations Board in the public interest to prevent unfair labor practices by labor organizations. By deleting the word exclusive, at the same time the Senate provided that the Board's powers under Section 10 shall not be affected by other means of adjustment or prevention, the Senate intended, and the Conference Agreement makes clear, House Conference Report No. 510, page 52, Legislative History, at page 556, 93 Cong. Rec. 6376, that

"" " when two remedies exist, one before the Board and one before the courts, the one before the Board shall be in addition and not in lieu of, other remedies."

In summary, in Section 10(a) of the Labor Management Relations Act, (A) in recognizing the continued existence of any other method of adjustment or prevention, (B) in providing only that the National Labor Relations Board was empowered to prevent unfair labor practices in the public interest as distinguished from the adjudication of private rights over which the Board was given no jurisdiction (C) in clarifying by a proviso the ceding of identical jurisdiction to provide such public remedies by agreement with state labor relations boards as distinguished from the jurisdiction of state courts where there was

no thought of any cession in connection with their then unquestioned continuing jurisdiction under state law, and (D) in deleting the former provision that the Board's jurisdiction should be exclusive, Congress clearly manifested its intention not to revolutionize our federal system by pre-empting the several fields of the unfair labor practices on the part of labor organizations added in the equalizing amendments of 1947 so as to lay low, in a Gulf-to-Canada-wide swath extending from Atlantic to Pacific the many-branched deeply-rooted fruitful and indispensible state court jurisdiction under valid state laws to adjudicate private rights. Congress gave no consideration to any such supersedure, much less to the perplexing ramifications as to where any such line of supersedure under a national labor law might be drawn with respect to various types of state laws. Congress provided no substitute and made it plain that it was not dealing with adjudication of private rights. The 80th Congress, in its 1st Session, in adding equalizing amendments empowering the National Labor Relations Board, in the public interest to prevent unfair labor practices by labor organizations as listed in Section 8(b) did not. enter the field of or intend to supersede state court jurisdiction to adjudicate private rights under valid state laws. To state court jurisdiction, Congress consents.

POINT II

CONGRESS HAS NOT ENTERED THIS FIELD OF PRIVATE RIGHTS

Petitioner's second contention is that state power is not excluded from a field Congress has not entered. Congress has delegated to the National Labor Relations Board, as to the Federal Trade Commission under prior similar statutory language intentionally followed, no jurisdiction to adjudicate private rights, and the jurisdiction of a state court in a field such as this accordingly continues. As restated in Cloverleaf Butter Co. v. Patterson, 315 U.S. 148, 155.

"It has long been recognized that in those fields of commerce where national uniformity is not essential, either the state or federal government may act." Where this power to legislate exists, it often happens that there is only a partial exercise of that power by the federal government. In such cases the state may legislate freely upon those phases of the commerce which are left unregulated by the nation."

We must know the boundaries of the field, or subject about which Congress has made provision, before we can say that congressional legislation under the Commerce Clause precludes a state from the exercise of any power reserved to it by the Constitution: Missouri K. & T. R. Co. v. Haber, 169 U.S. 613, 624; Savage v. Jones, 225 U.S. 501, 532; Cloverleaf Butter Co. v. Patterson, 315 U.S. 148, 155-156, 157-158, 167-

168; Hines v. Davidowitz, 312 U.S. 52, 61; International Union, etc. v. Wisconsin Employment Relations Board, 336 U.S. 245, 253, 254.12

Where Congress has entered a field, if at all, through a federal commission or board, it is generally clear that with respect to a subject withheld from the power of that federal agency Congress has not entered the field: Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 773; Atchison, T. & S. F. R. Co. v. Railroad Commission, 283 U.S. 380, 392. See also International Union v. Wisconsin Employment Relations Board, 336 U.S. 245, 253, 254, and Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, 315 U.S. 740, 749, supra. 19

¹² These cases and a number of others helpful in determining whether Congress has entered a field have been listed, and the field entered by Congress in each case briefly identified, in the first footnote under Point I, supra, where the general rule was recognized that in determining whether Congress has entered the field in issue, the presumption is in favor of the state and Congress must clearly manifest an intention to enter the field. Under the National Labor Relations Act and the Labor Management Relations Act Congress has not by abstract projection asserted pervasive control over a general subject ... of labor disputes, Allen-Bradley Local No. 1111, etc. v. Wisconsin Employment Relations Board, 315 U.S. 740, 750, 749 ("Congress has not made such employee and union conduct as is involved in this case subject to regulation by the federal Board"), and the particular subjects it has regulated must be determined by the terrain of specific sitnations, Amaleamated, etc. v. Wisconsin Employment Relations Board, 340 U.S. 383, 390 ("this field" "of peaceful strikes for higher wages").

Board, 330 U.S. 767, 773, the Supreme Court said:

[&]quot;In the National Labor Relations Act, Congress has sought to reach some aspects of the employer-employee rela-

The Labor Management Relations Act, read in the light of its purposes and its legislative history, does not enter this field of private rights and Congress has delegated to the National Labor Relations Board no authority to adjudicate private rights. The Labor Management Relations Act, amending the National Labor Relations Act, drawn in analogy to the Federal Trade Commission Act, "empowers" the National Labor Relations Board to prevent certain unfair practices, in a proceeding narrowly restricted to the protection and enforcement of public rights, giving effect, through broad administrative discretion, to the declared public policy of such legislation based upon the Commerce Clause: National Licorice Co. v. National Labor Relations Board, 309 U.S. 350, 362-363.

In International Union v. Wisconsin Employment Relations Board, 336 U.S. 245, 253, it is said that:

tion * * * it has dealt with the subject or relationship but partially, and has left outside the scope of its delegation other closely related matters. * * * Such was the situation in Allen-Bradley * * * where we held that employee and union conduct over which no direct or delegated federal power was exerted by the National Labor Relations Actoris left open to regulation by the state."

[&]quot;Congress made in the National Labor Relations Act no express delegation of power to the Board to permit or forbid this particular union conduct, from which an exclusion of state power could be implied."

In Atchison, T. & S. F. R. Co. v. Railroad Commission, 283 U.S. 380, 393, the Supreme Court clearly reasoned that:

As set forth in Amalgamated Utility Workers v. Consolidated Edison (o., 309 U.S. 261, 268,

"In both Houses of Congress, the Committees were careful to say that the procedure provided by the bill was analogous to that set up by the Federal Trade Commission Act, section 5 [38 Stat. 719, 15 U.S.C., section 45], which was deemed to be 'familiar to all students of administrative law'. That procedure, which was found to be prescribed in the public interest as distinguished from provisions intended to afford remedies to private persons, was fully discussed by this Court in Federal Trade Commission v. Klesner, 280 U.S. 19, 25 ***

In the National Labor Relations Act, in keeping with its purposes, the Committee on Labor of the House of Representatives, H. R. Rep. No. 972, 74th Cong., 1st Sess., page 24, expressly stated that:

"No private right of action is contemplated." Congress deliberately followed the pattern of the Federal Trade Commission Act in thus providing that the Board was "empowered" to "prevent" unfair practices and adopted the settled construction of that language that it did not authorize adjudication of private rights. In Federal Trade Commission v. Klesner, 280 U. S. 19, 25, where a former lessor engaged in the unfair practice of copying the name "Shade Shop" long used by a lessee who removed under acrimonious circumstances, the jurisdiction of the Supreme Court of the District of Columbia to determine whether to enjoin use of that name and adjudicate the private right of the parties was not questioned and the Supreme

Court of the United States, speaking through Mr. Justice Brandeis, construing Section 5 of the Federal Trade Commission Act which empowered that commission to prevent such unfair practices, held that "Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrongs." In the light of that decision, state courts have continued to adjudicate private rights under state law in connection with such unfair acts, even though the Federal Trade Commission is empowered to prevent such unfair practices: 2 Nims, Unfair Competition (4th Edition, 1947). page 1186, Section 373(e). Congress followed this precedent, in the National Labor Relations Act. When the Labor Management Relations Act amended the National Labor Relations Act it retained that identical, authoritatively construed language by which the Board was "empowered to prevent" unfair practices affecting interstate commerce. Expression to this then obvious intention was voiced in Senate Report No. 105 on S. 1126, page 8, Legislative History, etc., A14, in pointing out, as to the addition of injunctive relief, that:

The same Senate Report No. 105 at page 23, Legislative History, etc., 429, in the same vein cautioned (in connection with a fifth unfair labor practice, later deleted, covering violations of collective bargaining agreements) that it would not be conducive to

The Conference Report, House Conference Report No. 510 on H. R. 3020, at page 57, Legislative History, etc., 561, supra, also makes clear that:

"The power of the Board " " will not affect the availability to private persons of " " remedies they might have in respect to such activities."

Clearly the Labor Management Relations Act, like the National Labor Relations Act and the Federal Trade Commission Act delegated to a federal administrative agency no power to adjudicate private rights. Congress thus continued in its intention, authoritatively stated by Senator Walsh, 79 Cong. Rec. 7661, in connection with the National Labor Relations Act that

"The courts will have in the future all the jurisdiction they have ever had in relation to all the differences which arise between employers and employees * * *"

In the Labor Management Relations Act Congress did not enter the field of civil liability or adjudication of private rights. This federal legislation accordingly did not override the jurisdiction exercised by the state court in this case to adjudicate the private right of an employer under familiar principles of the

the purpose of the bill if the Board took jurisdiction over cases that could be adjusted by litigation in court or "if in the guise of practice cases it entertained damage actions arisms out of breach of contract. • • • Any other course would engulf the Board with a vast number of petty cases that could best be settled by other means."

common law in force in Pennsylvania against harm, and substantial harm it was, from concerted activity for an unlawful purpose.

A similar distinction, recognizing civil liability as a field which Congress had not entered when it made no provision therefor, was recognized and reaffirmed before the decision in Federal Trade Commission v. Klesner, supra, 280 U.S. 19, 25, and before the Federal Trade Commission Act.

In the leading case of Savage v. Jones, 225 U.S. 501, 534-536, there appears a pointed, meticulous restatement and reaffirmation of the very pertinent decision in Missouri K. & T. R. Co. v. Haber, 169 U.S. 613, as follows:

"In Missouri, Kansas & Texas Ry. Co. v. Haber, supra, the Supreme Court of Kansas had affirmed a judgment against the railway company for damages caused by its having brought into the State certain cattle alleged to have been affected with Texas fever which was communicated to the cattle of the plaintiff. The recovery was based upon a statute of Kansas which made actionable the driving or transporting into the State of cattle which were liable to communicate the fever. It was contended that the act of Congress of May 29, 1884, c. 60 (23 Stat. 31), known as the Animal Industry Act, together with the act of March 3, 1891, c. 544 (26 Stat. 1044), appropriating money to carry out its provisions and § 5258 of the Revised Statutes, covered substantially the whole subject of the transportation from one State to an-

other State of live stock capable of imparting contagious disease, and therefore that the State of Kansas had no authority to deal in any formwith that subject. The act of 1884 provided for the establishment of a bureau of animal industry, for the appointment of a staff to investigate the condition of domestic animals and for report upon the means to be adopted to guard against the spread of disease. Regulations were to be prepared by the commissioner of agriculture and certified to the executive authority of each State and Territory. Special investigation was to be made for the protection of foreign commerce and the Secretary of the Treasury was to establish such regulations as might be required concerning exportation. It was provided that no railroad company within the United States nor the owners or masters of any vessel should receive for transportation, or transport, from one State to another any livestock affected with any communicable disease, nor should any one deliver for such transportation, or drive on foot or transport in private conveyance from one State to another any livestock knowing them to be so affected. It was made the duty of the commissioner of agriculture to notify the proper officials or agents of transportation companies doing business in any infected locality of the existence of contagion; and the operators of railroad, or the owners or custodians of livestock within such infected district. who should knowingly violate the provisions of the act were to be guilty of a misdemeanor punishable by fine or imprisonment.

"The court held that this Federal legislation did not override the statute of the State; that the latter created a civil liability as to which the Animal Industry Act of Congress had not made provision. The court said (supra, pp. 623, 624):

"'May not these statutory provisions stand without obstructing or embarrassing the execution of the act of Congress? This question must of course be determined with reference to the settled rule that a statute enacted in execution of a reserved power of the State is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the Constitution, unless the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or stand together. Sinnot v. Davenport, 22 How. 227, 243. * * Whether a corporation transporting, or the person causing to be transported from one State to another cattle of the class specified in the Kansas statute, should be liable in a civil action for any damages sastained by the owners of domestic cattle by reason of the introduction into their State of such diseased eattle, is a subject about which the Animal Industry Act did not make any provision. That act does not declare that the regulations established by the Department of Agriculture should have the effect to exempt from civil liability one who, but for such regulations, would have been liable either under the general principles of law or under some state enactment for damages arising out of the introduction into that State of cattle so affected.

And, as will be seen from the regulations prescribed by the Secretary of Agriculture, that officer did not assume to give protect in to any one against such liability."

As reaffirmed in Savage v. Jones, 225 U.S. 501, 534-536, supra, and never questioned, the decision in Missouri K. & T. R. Co. v. Haber, 169 U.S., 613, 623-625, is decisive. Here, as there, the federal legislation makes no provision about the subject of damages sustained by reason of federally prescribed conduct. Just as the Secretary of Agriculture there did not assume to give protection to anyone transporting cattle against such liability for damage done by the cattle, so here the National Labor Relations Board has no authority to create an immunity for any labor organization that incurs liability to anyone under state statute or common law by reason of conduct amounting to an unfair labor practice. The state law of torts, as enlarged by state statute in that case, remained effective to permit recovery of damages sustained from diseased cattle which Congress had said shouldn't be brought into the state and here the state law is likewise effective to permit recovery of damages, or injunctive relief where the damage would be irreparable, for something which has been done which Congress likewise said should not be done. This case is well within the decision there and its reasoning (at page 625) that:

"The controlling object of the regulations was to prevent the spreading from one State to another of the cattle disease in question, not to deprive anyone of the right to recover damages for injury inflicted upon his domestic cattle by rea-

son of their being brought into contact with diseased cattle."

In short, the labor unfair practice provisions of the Labor Management Relations Act do not exempt from civil liability a labor organization which, but for such equalizing amendment, would have been liable either under general principles of law or an enactment of a state. Whether the union should be liable in a civil action for any damages, or should be enjoined to protect that same private right, is a subject about which the Labor Management Relations Act makes no provision. As reaffirmed in National Licorice Co. v. National Labor Relations Board, 309 U.S. 250, 362,

"The proceeding authorized to be taken by the Board under the National Labor Relations Act is not for the adjudication of private rights."

In harmony with the foregoing decisions, legislative provisions and legislative history indicating that Congress had not entered the field, state courts have continued, since the National Labor Relations Act was amended by the Labor Management Relations Act, to exercise jurisdiction under state law to decide cases in contract, tort and other fields of law whether or not there might be presented by the facts in issue or the surrounding controversy an unfair labor practice which the National Labor Relations Board was empowered, in its discretion in the public interest, to preyent. Before detailing some of the great weight of authority, we will first distinguish certain cases that constitute the exception, so to speak, that proves the rule.

By a parity of reasoning, the state courts at the same time decline to enforce the new public rights. created by the Labor Management Relations Act when it added its outlawry of certain equalizing unfair labor practices on the part of labor organizations: Gerry of California v. Superior Court, 32 Cal. 2d 119, 194 P. 2d 689, 691, 692-694; Ex Parte De Silva, 33 Cal. 2d 76, 199 P. 2d 6, 7-8; Sommer v. Metal Trades Council, etc. - Cal. - , 254 P. 2d 559, 563; General Electric Co. v. International Union, etc., 108 N.E. 2d 211, 219-220 (Court of Appeals of Ohio); M. T. Reed Construction Co. v. Jackson Building Trades Council, 51 A.L.C. 287, 27 L.R.R.M. 2161 (Mississippi, Leake County); J. C. Robinson v. Chauffeurs, etc., 51 A.L.C. 1052, 28 L.R.R.M. 2453 (Tennessee Court of Appeals). Compare Costaro v. Simons, 302 N.Y. 318, 98 N.E. 2d 454, 455 ("necessity of resorting in the first instance to the National Labor Relations Board") and State ex rel. Tidewater Shaver Barge Lines, v. Dobson, ---Ore. ____, 245 P. 2d 903, 927 ("status quo until the Board had time and opportunity"). Relying primarily upo Amalgamated Utility Workers v. Consolidated Edison Co., 309 U.S. 261, 264, supra, Gerry of California v. Superior Court, 32 Cal. 2d 119, 194 P. 2d 689, 692, supra, rejected

"* * petitioner's argument that the state courts have concurrent jurisdiction with the federal courts to enforce rights created by a federal statute."

Likewise, the National Labor Relations Act failed to vest jurisdiction in the federal district courts to grant relief against unfair labor practices when it provided an adequate administrative remedy for its new public rights before the National Labor Relations Board. Amazon Cotton Mill Co. v. Textile Workers Union, 167 F. 2d 183, 188 (C. A. 4). Such decisions are inapplicable here, where the state court adjudicates private rights under state law and does not attempt to enforce new public rights created by the Labor-Management Relations Act. The distinction is recognized in Teller, Labor Disputes and Collective Bargaining, Section 398.24, 1950 Supplement, page 60:

"There is no authority in state courts to grant injunctions at the instance of private parties, restraining the commission of unfair labor practices specified in Section 8. Only the Board may do so, and in the federal courts. On the other hand, it is doubtful that the Act has deprived state courts of the right to issue injunctions against activities of employees or labor unions carried on for unlawful labor objectives as defined in state law, even if the industry involved in the proceeding 'affects' commerce, provided, of course, that the result does not collide with the policies of the Act."

The same reason, that the Labor-Management Relations Act creates a special administrative remedy to protect new public rights and not to adjudicate private rights, excluding any implied state court jurisdiction to enforce the Labor-Management Relations Act, also sustains the continuing authority of state courts to adjudicate private rights under state law.

The great weight of persuasive authority in the many jurisdictions which have considered the issue here presented sustained the jurisdiction of state courts under state laws to decide cases and adjudicate private rights in traditional fields, such as contract and tort, whether or not the facts in issue between the parties amounted also to an unfair labor practice under the Labor-Management Relations Act, subject to the paramount power of the National Labor Relations Board to fashion remedies in the public interest, the state courts being bound, of course, to recognize rights guaranteed by the Labor-Management Relations Act: Montgomery Building and Construction Trade Council, et al. v. Ledbetter Erection Co., 258 Als. 678, 57 S. 2d 112, rehearing denied, 256 Ala. 689, 57 S. 2d 121, certiorari granted, 343 U.S. 962, petition for certiorari disseised as improvidently granted, 343 U.S. ---, 73 S. Ct. 196; Russell v. International Union, - Ala, - 64 S. 2d 384, 391 392; Lion Oil Co. v. Marsh. - Ark. -249 S.W. 2d 569, 571; Sommer v. Metal Trades Council. etc., - Cal. - 254 P. 2d 559, 562-565; Oil Workers etc. v. Superior Court, 103 Cal. App. 2d 512, 230 P. 2d 71, 107-109: Williams v. Cedartown Textiles, 208 Ga. 659, 68 S.E. 2d 705, 708-709; Thayer Co. v. Binnall, 326 Mass, 467, 95 N.E. 2d 193, 201-202; Way Baking Co. v. Teamsters, etc., 335 Mich. 478, 56 N.W. 2d 357, 365-366, certiorari denied — U.S. —, 73 S. Ct. 939; Southern Bus Lines v. Amalgamated, etc., 205 Miss. 354, 38 S. 2d 765, 770; Kincaid-Weber Motor Co. v. Quinn, 362 Mo. 375, 241 S. W. 2d 886; Rice and Holman, et al. v. United Electrical, etc. Workers, et al., 3 N.J. Super. 638, 65 A. 2d 258; Bickford's, Inc. v. Mesevich. 107 N.Y.S. 369, 372; Art Steel Co. v. Velazquez, 111

N.Y.S. 2d 198, 201; Erwin Mills, Inc. v. Textile Workers, etc., et al., 234 N. Car. 321, 67 S.E. 2d 372, 379; General Electric Co. v. International Union, etc., 108 N.E. 2d 211, 218-221 (Ohio Court of Appeals); Wortex Mills v. Textile Workers, etc., 369 Pa. 359, 363-364; General Building Contractors Association v. Local, etc., 370 Pa. 73, 80-81; International Molders, etc. v. Texas Foundries, Inc., 241 S.W. 213, 215-216 (Tex. Civ. App.) modifying trial court's temporary injunction, that temporary injunction being reaffirmed in Texas Foundries v. International Molders, Inc., etc., -Tex: —, 248 S.W. 2d 460; Truck Drivers etc. v. Whitefield Transportation. — S.W. 2d —— (Tex. Civ. App.), 23 Labor Cases (par. 67, 719); United Construction Workers, et al. v. Laburnum Construction Corp., 194 Va. 872, 75 S.E. 2d 694, 698-700. Among the lower court decisions, there have come to our attention three rather close to the case at bar enjoining picketing for a purpose unlawful under state law: Hall Steel Co. v. International Brotherhood of Teamsters, et al., 53 A.L.C. 132, 138-141, (Mich. Genesee County); Winkelman Brothers Apparel, Inc. v. Local 299, etc., 52 A.L.C. 1153, 1160-1161 (Mich., Wayne County); The Richman Brothers Co. v. Amalgamated, etc., 58 A.L.C. 831, 835 (Ohio, Cuyahoga County). We are impressed, in studying these cases where state courts adjudicate private rights in traditional fields of state law, that state courts continue to be indispensable tillers of these fields in maintaining rule of law. Even apart from the limits on effective dederal administrative action, the spontaneously recognized practical necessity that justice be administered calls for continuing exercise by the fortyeight states of their "reserved power over coercive

conduct", International Union v. Wisconsin Employment Relations Board, 336 U.S. 245, 264.

Such persuasive precedent is in harmony with the decisions of the Supreme Court of the United States. Two contrary state court decisions, based upon a misapplication of the decisions of the Supreme Court of the United States, by the Pennsylvania Supreme Court in this case and by the Supreme Court of Minnesota in Norris Grain Co. v. Nordaus, 232 Minn. 91, 46 N.W. 2d 94, 100-102, 107, stand almost alone.

In their bearing upon the issue of state court jurisdiction under state law presented by this case, the ten decisions of the Supreme Court of the United States under the Labor Management Relations Act and the National Labor Relations Act drawing a necessary line, in the light of revelant congressional expression of intention, between federal and state power may be placed in three significant classes. Three decisions (considered under Point IV, intra), including the wo most recent decisions, decide that basic rights conferred by federal labor legislation, including the rights conferred upon employees to bargain collectively through a representative of their own choosing and to engage in protected concerted activity cannot be frustrated or abrogated by state legislation: Hill v. Florida, 325 U.S. 538; International Union, etc. v. O'Brien. 339 U.S. 454; Amalgamated Association, etc. v. Wisconsin Employment Relations Board, 340 U.S. 383. Four cases (considered under Point III, infra), all involving state labor relations boards with broad-discretionary and policy-making authority designed to protect the same public interest, decide that the jurisdiction of the National Labor Relations Board when exercised is paramount and when unexercised precludes state board action involving real potentials of conflict: Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197; Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767; La Crossa Telephone Corp. v. Wisconsin Employment Relations Board, 336 U.S. 18: Flankiscon Packing Co. v. Wisconsin Employment Relations Board, 338 U.S. 953. The remaining three fises (considered next in this Point II) significantly sustained even state labor relations board jurisdiction to apply remedies in the public interest against unfair practices which Congress had not made unfair practices: Allen-Bradley Local No. 1111, v. Wisconein Employment Relations Board, 315 U.S. 740; International Union v. Wisconsin Employment Relations Board, 336 U.S. 245; Algoma Plywood & Veneer Co. v. Wisconnin Employment Relations Board, 336 U.S. 301.

Language favorable to such state court jurisdiction appears in the three cases sustaining even the jurisdiction of policy-making state labor relations boards empowered with broad discretion to prevent unfair labor practices in the public interest. Allen-Bradley Local No. 1111, etc. v. Wisconsin Employment Relations Board, 315 U.S. 740, 7 9, upholaing the state board's order that the union cease certain picketing, threatening and obstructing, declared that:

exerted to control such conduct. Furthermore, this Court has long insisted that an 'intention of Congress to exclude states from exerting their police power must be clearly manifested'."

As further stated (at page 748, footnote 7, quoting S. Rep. No. 573, 74th Cong., 1st Sess., page 16. H. Rep. No. 1147, pages 16-17, containing identical language):

"The bill is not a mere police court measure. The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and labor injunctions in industrial disputes through the country will attest."

Although it was regulation that was being upheld, it was concluded (at page 751) that:

"Bince the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long obtained in this Court."

International Union, etc. v. Wisconsin Employment Relations Board, 336 U.S. 245, 265, 253, 254 permitting exercise, through a state labor relations board of

"... the state police power " " over a subject normally within its exclusive power " " " " upheld the prevention of intermittent work stoppages and reiterated that:

"However, as to coercive tactics in labor controversies, we had said of the National Labor Relations Act what is equally true of the Labor Management Act of 1947, that 'Congress designedly left open an area for state control' and that 'the intention of Congress to exclude states from exerting their police power must be clearly manifested.' • • In this case there was also evidence of considerable injury to property and intimidation of other employees by threats and no one questions the state's power to police coercion by those methods.

"It seems to us clear that this case falls within the rule announced in Allen-Bradley that the state may police these strike activities " " "

Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board, 336 U.S. 301, 305, 306, permitting a state agency or labor relations board to prevent, in the public interest, unfair labor practices not listed in Section 8 of the federal labor legislation, upheld a state board order reinstating, with back pay, an employee discriminatorily discharged and pointed out that:

"The States are free (apart from preemption by Congress) to characterize any wrong of any kind by an employer to an employee, whether statutorily created or known to the common law, as an 'unfair labor practice.' "So far as appears from the Committee Reports " " \$ 10(a) was designed, as its language declares, merely to preclude conflict in the administration of remedies for the practices proscribed by \$ 8."

As we read the foregoing three decisions of the Supreme Court, Allen-Bradley, Wisconsin Auto Workers and Algoma, state court labor injunction jurisdiction under the police power continues (see also Milk Wagon Drivers, etc. v. Meadowmoor Dairies, 312 U.S. 287, 295,

209-300, 318), even state labor relations boards can administer remedies where there will be no conflict in the administration of remedies with the paramount administrative authority of the National Labor Relations Board, and a fortiori, state courts may under valid state law adjudicate private rights, a field over which no authority has been delegated by Congress to the National Labor Relations Board.¹³

Precisely because Congress has not entered the field, Congress has not considered the perplexing problems as to where the lines would be drawn, as they would have to be, if there were some supersedure of state court jurisdiction. Paraphrasing Petro, Participation by the States in the Enforcement and Development of National Labor Policy, New York

The National Labor Relations Board, as amicus curiae, may repeat in this case its oft-repeated plea-that it be permitted to do all the washing of all the dirty linen of unfair labor practices found on all the boys playing in its own backyard. The text supplies the answer; adjudication of private rights is not in the N.L.R.B. backyard. Moreover, Congress has been concerned that at times, if the N.L.R.B. spirit has been willing, the flesh has been weak, even if because of congressional short rations. The short rations at that have been quite sufficient in the wisdom of Congress for the preventive function in the national interest that Congress in its equalizing amendment deemed a sufficient assignment for the N.L.R.B. The point, in a relevant context, is well put in Senate Report No. 105 on S. 1126, page 23, Legislative History, etc., 429, that

[&]quot;Any other course would engulf the Board with a vast number of petty cases that could best be settled by other means."

Congress has not seen fit to favor the bills that have been introduced to exclude neighborly state court jurisdiction on the other side of the N.L.R.B. backyard fence.

University Fifth Annual Conference on Labor (1952), it is almost unthinkable, especially in view of a number of state court decisions upholding state court injunctions against union restraint of trade, Carpenters, etc. v. Ritter's Cafe, 315 U.S. 722, 724, 728; Giboney v. Empire Storage, etc., 336 U.S. 490, 491, footnote 1, 497, to declare that such state court jurisdiction is precluded by the Labor Management Relations Act. Again, on the basis of the prima facie tort theory with the articulation of which the name of Holmes is so identified, a whole structure of common law for concerted labor action has been built. Is this structure to be torn down or arrested in its present stage and the jurisdiction of state courts blotted out simply because the Labor Management Relations Act has spoken-and consistently with the common law at that-on some phases?

As more briefly stated in the corresponding second section of the Summary of Argument, under this federal labor legislation, as under the Federal Trade Commission Act which was deliberately followed as a pattern therefor, Congress has delegated to the National Labor Relations Board in authority to adjudicate private rights and has not entered this field where state court jurisdiction thereof continues.

POINT III

ONGRESS HAS NOT OCCUPIED THIS FIELD AND THERE IS NO CONFLICT WITH AN N.L.R.B. PARAMOUNT REMEDY

Hationers' third alternative contention is that even if Congress has entered the field in issue, Congress has not occupied the field to the excl. sion of the state court jurisdiction that was here exercised. As petitioners' second contention, that Congress had not entered the field, derives support from Allen-Bradley, Local No. 1111 v. Wisconsin Employment Relations Board, 315 U.S. 740; International Union, etc. v. Wisconsin Employment Relations Board, 336 U.S. 245 and Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board, 336 U.S. 301, 305, each involving an unfair labor practice which the National Labor Relations Board had not been empowered to prevent, so this third contention is based upon Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767; La Crosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U.S. 18 and Plankinton, Packing Co. v. Wisconsin Employment Relations Board, 338 U.S. 953, as well as Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197. cases where Congress had delegated to the National Labor Relations Board specific authority to handle the matters of representation or the unfair labor practices for which the states had also provided state labor relations boards and administrative procedures or remedies. Where Congress has entered a field (particularly where it has empowered an administrative agency to act as considered in the cases catalogued in Bethlehem, supra) there remains, as California v. Zook, 336 U.S. 725, shows so strikingly, the question how far Congress has occupied that field with resultant exclusion of state power.

The field Congress entered should not in this case, for the reasons stated be viewed in terms of a physical act but if it be said that Section 8(b) (2) constitutes an entry by Congress into the field of that anfair labor

18 A number of relevant cases have been collected in the first footnote under Point I, supra, with brief identification of the fields entered by the acts of Congress there considered, and a suggestion that the presumption may now be against the state in determining the extent of occupancy intended once Congress has entered the field. As we read California v. Zock, 336 U.S. 725, 731, 748-749, 740, all the justices were in agreement with the distinction taken by Mr. Justice Frankfurter (at page 740), which offers sufficient basis for a unanimous decision in this case that:

"Of course the same physical act may offend a State policy and another policy of the United States. Assaulting a United States marshal would offend a State's policy against street brawls, but, it may also be an obstruction to the administration of federal law. Scores of such instances, inviviable in a federal government, will readily suggest themselves. That was the kind of a situation presented by United States v. Marigold, 9 How. 560, 13 L. Ed. 257. Passing counterfeit currency may, in one aspect, be 'a private cheat practiced by one citizen of Ohio upon another,' and therefore invoke a State's concern in 'protecting her citizens against fraud,' 9 How. at pages 568, 569, 13 L. Ed. 257, but the same passing becomes of vital concern to the Federal Government because it tends to debase the currency."

So here the picketing may offend federal policy for protection of the free flow of interstate commerce, and at the same time offend against a vital policy that there be a remedy for tortious harm to the person thus picketed. practice; nevertheless Congress has not occupied the field to the exclusion of state court jurisdiction.17

State court jurisdiction in this case is not ousted by the fact that the Labor Management Relations Act empowers the National Labor Relations Board to proceed under Section 8(b) (2) against picketing for the unlawful purpose here involved on the ground that Section 8(b) (2) makes it an unfair labor practice for a labor organization to attempt to cause an employer to discriminate against an employee in violation of Section 8(a) (3) to encourage or discourage membership in any labor organization. While the trial court, under then-narrow decisions of the National Labor Relations Board (R. 186) such as United Brotherhood of Carpenters and Joiners of America, etc. (Wadsworth Building Co., Inc.), 81 N.L.R.B. 802, had held that the picketing was not outlawed by the Labor Management Relations Act, the decision of the Supreme Court of Pennsylvania that Section 8(b) (2) does apply to this picketing (R. 232) is sustained by the more recent progress in the decisions of the National Labor Relations Board toward the original congressional intention, Denver Building Trade and Construction Trades Council (Henry Shore), 90 N.L.R.B. 1768. 1769-1770. Sub Grade Engineering Company, 93

"Rather the language covers the specific abuse which has come to the attention of Congress. It does not invite others."

If Section 8(b) (2) had not applied, that ceiling on nationally conspicuous abuses did not by implication make right something less that a congress for the nation did not make wrong. The general approach of Congress, as pithily put in a different context in House Conference Report No. 510 on H. R. 3020, page 55, Legislative History, etc. 559, was that

N.L.R.B. 406, 407-408, and Appendix B, infra. Whether this presents coincidence or potential conflict within the meaning of three decisions of the Supreme Court which will now be reviewed drops out of this case of state court jurisdiction since as we have seen (Point I, supra) Congress, in adding a public administrative remedy for outlawry of such unfair labor practices, intended that state courts continue to exercise jurisdiction under state law to adjudicate private rights.

In Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, an assertion by the New York State Labor Relations Board of jurisdiction, in representation proceedings, to certify foremen bargaining units contrary to an inconsistent policy for a time followed by the National Labor Relations Board was held to conflict with the National Labor Relations Act and the court's opinion, after an elaborate statement of principles for implying congressional intention not expressed in the pertinent Section 9 reasoned (at pages 775 and 776) that:

"State and Federal "governments have " "delegated to an administrative authority a wide discretion in applying this plan of regulation to specific cases, and they are governed by somewhat different standards. Thus, if both laws are upheld, two administrative bodies are asserting a discretionary control over the same subject matter, conducting hearings, supervising elections and determining appropriate units for bargaining in the same plant. They might come out with the same determination, or they might come out with conflicting ones as they have in the

past. * * But we do not think that a case by case test of federal supremacy is permissible here."

Similarly, in La Crosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U.S. 18, 20, the certification by a state labor relations board of a rival union as collective bargaining representative for two departments in place of a long-recognized collective bargaining representative was set aside because on the basis of very real potentials of conflict it "conflicts with the National Labor Relations Act". Detailing the combicting standards for federal and state board administrative discretion prescribed by the National Labor Relations Act and the Wisconsin Act for determining the appropriate bargaining representative or unit of representation and the additional measure of conflict in practical effect incident to informal administrative disposition of cases without formal order, the Supreme Court reaffirmed that:

"These are the very real potentials of conflict which lead us to allow supremacy to the federal scheme even though it has not yet been applied in any formal way to this particular employer.

* * The uncertainty as to which board is master and how long it will remain such can be as disruptive of peace between various factions as actual competition between two boards for supremacy. We are satisfied with the wisdom of the policy underlying the Bethlehem case and adhere to it.

On the authority of the foregoing two decisions the citation of which constituted the court's per curian opinion, the jurisdiction of a state labor relations board

over an employer unfair labor practice which was also an unfair labor practice under the National Labor Relations Act was denied in Plankinton Packing Co. v. Wisconsin Employment Relations Board, 338 U.S. 953. We set forth a brief statement from the two decisions below and the facts in appraising this cursory affirmation of settled principles. The Wisconsin Employment Relations Board by order of December 6. 1946, had ordered the reinstatement with back pay of an employee discharged because of pressure brought upon the employer by the union, when the employee had seasonably exercised his privilege of escape under a maintenance-of-membership contract. The union had secured that contract as the result of a National War Labor Board directive of February 20, 1945, providing for union security. Such discrimination in regard to tenure of employment to encourage membership in any labor organization was made an employer unfair labor practice both under Section 111.06 of the Wisconsin Employment Peace Act and by Section 8(3) of the National Labor Relations Act in substantially identical language. The National Labor Relations Board had assumed jurisdiction over the employer, a whollyowned subsidiary of Swift & Company, by an order certifying the C.I.O. as a bargaining agent for the employee and reasserted that jurisdiction in July of 1945 when it entertained a petition by an A. F. of L. union for representative proceedings. The employee on March 6, 1945, effectively resigned from the C.I.O. union which had secured the maintenance-of-membership contract permitting escape before March 9, 1945, The Wisconsin Employment Relations Board found that as a result of the coercion of the C.I.O. union, and

at its request, this employee was discharged on May 9, 1945, for the reason that he had exercised his right to refrain from membership in the C.I.O. union.

In Wisconsin Employment Relations Board v. Flankinton Packing Company, 23 LRRM, 2287, 2291, the Wisconsin Circuit Court for Milwaukee County dismissed a petition of the board for enforcement of its order of December 6, 1946, and held that the order was

". . . void for the reason that the state board had no jurisdiction to make the same " * " "

The court relied primarily upon the Bethlehem case, supra, 230 U.S. 767, and added a suggestion that the power of the National Labor Relations Board to prevent employer unfair labor practices under Section 10(a) of the National Labor Relations Act in effect at the time of the state board order was at that time in terms "exclusive". Judge Kleevka said (23 LRRM at page 2290):

"Counsel for the company and the union; rely upon the * * * cases of Bethlehem Styel Co.

* * and Allegheny Ludlum Steel Corp. * * *

"In the aferesaid cases the court held that comparison of the state and federal statutes showed that both federal and state governments have laid hold of the same relationship for regulation, and it involves the same employers and the same employees. Each has delegated to an administrative authority a wide discretion in applying this plan of regulation to specific cases, and they

In Wisconsin Employment Board v. Plankinton Packing Co., et al., 255 Wis. 285, 38 N.W. 2d 688, 692, the Supreme Court of Wisconsin reversed with directions to enter judgment enforcing the provisions of the Board's order of December 6, 1946. The Wisconsta Supreme Court in its opinion of July 12, 1949, merely re-affirmed by reference its oft-expressed view that the Wisconsin Board could exercise jurisdiction until the National Board undertook to exercise jurisdiction in the same case. That case-by-case test for state administrative board jurisdiction had not been accepted in Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board, 336 U.S. 301, 305-306, when previously asserted in Wisconsin Employment Relations Board v. Algoma Plywood & Veneer Co., 252 Wis. 549, 32 N.W. 2d 417, 421; and on still a prior occasion when the same view had been asserted in Wisconsin Employment Relations Board v. La Crosse Telephone Corporation, 251 Wis. 583, 30 N.W. 2d 241, it had been repudiated in La Crosse Telephone Corporation v. Wisconsin Employment Relations Board, 336 U.S. 18, 24.

Under these circumstances the employer's petition for writ of certiorari to the Supreme Court of Wisconsin was promptly granted on December 12, 1949, and reversal was swiftly accomplished in a very appropriate per curiam opinion of February 13, 1950, reading as follows:

"The judgment is reversed. Bethlehem Steel Co. v. New York State Relations Board, 330 U.S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234; La Crosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U.S. 18, 69 S. Ct. 379."

In general in representation and unfair practice cases, involving discretionary action by state administrative policy-making agencies providing public remedies, where cases so often are settled without formal order on an administrative basis, somewhat different standards were provided.¹⁸

There was an intimate relation between the employer unfair practice in the Plankinton case and the sensitive matter of representation from which state labor relations board had been excluded in the Bethlehem and La Crosse cases, Congress had taken the particular subject matter in hand, there was a very real possibility in cases of the same type of state enforcement of a policy differently conceived, and under such circumstances coincidence was as ineffective as opposition to save such state regulations. A very different situation is here presented by a state court adjudication of private rights, a subject matter Congress had not taken in hand, under valid state law, where there

Act, 64 Harvard Law Review 781, 786,

[&]quot;The great bulk of unfair practice charges and representation petitions continue to be disposed of informally in the NLRB regional offices."

In one year informal disposition was made of 7,017 out of 9,245 representation cases and of 4,199 out of 4,664 unfair practice cases: 14th Ann. Rep. of NLRB, 164-166.

was no conflict and no likelihood of conflict and a case-by-case test of federal supremacy is permissible.

In state board representation cases like Bethlehem, with their very real potentials of conflict, the courts have developed ample authority for the National Labor Relations Board, through injunctive proceedings in federal district courts to protect its jurisdiction: National Labor Relations Board v. Industrial Commission of Utah, 84 F. Supp. 593, 594, affirmed 172 F. 2d 389 (C. A. 10): Food, etc. Workers v. Smiley, 164 F. 2d 922 (C. A. 3). Since such injunctions were issued the Supreme Court of the United States clarified the exclusive jurisdiction over such representation proceedings of the National Labor Relations Board and there has been little reposition of such precedents.

The same procedure is available to the National Labor Relations Board to protect its paramount jurisdiction in the unlikely event of conflict between its public remedies and a state court proceeding to adjudicate private rights. The possibility of conflict between a restraining order of a state court, sustaining for example the validity of a bargaining agreement with one union, and obedience to a board order to bargain collectively with another union was presented in National Labor Relations Board v. Grace Company, 184 F. 2d 126 (C.A. 8) where it was suggested that:

"At least respondent was entitled to a reasonable time in which to secure a modification or dissolution of the State court order."

A search of the reported decisions discloses very few instances where the National Labor Relations Board was constrained to enjoin state court proceedings, one such instance recently appearing in Capital Service, Inc. v. National Labor Relations Board, 204 F. 2d 848 (C.A. 9), where a federal district court granted a preliminary injunction against the enforcement by a bakery of a state court preliminary injunction in a consumer boycott case where the district court found it advisable to hold the situation in the status quo until the National Labor Relations Board determined whether it would consider an unfair labor practice charge against the unions previously filed by that bakery with the Regional Director of the Board. In the few such cases that have arisen, federal supremacy can be maintained by orders appropriate to the particular circumstances of the individual case.

At one time the Board thought it advisable, in W. T. Carter and Brother, 90 N.L.R.B. 2920, 2023-2024, in the case of an exparte temporary restraining order in a Texas court (which in effect prohibited any union meetings, constituting "an abuse of legal process" in the majority's opinion to:

"... view the Respondents' resort to court proceedings to prevent the union meetings, no less than the other devices they employed for that purpose, as an unfair labor practice."

Dissenting as to that, Chairman Herzog, 90 N.L.R.B., at page 2029, expressed his opinion that:

"... it seems to me that this Board should accommodate its enforcement of the statute to the traditional right of all to bring their contentions to the attention of a judicial forum, rather than

hold it to be an unfair labor practice for them to attempt to do so."

A

Chairman Herzog noted that it might well be that in granting such a relief a court would be acting inconsistently with governing Federal law and that of course the Beard was not powerless to assert paramount Federal authority directly when such action was taken by a state court. Senator Taft thereafter called this Carter case to the attention of the Senate, 97/Cong. Rec. 6064, as illustrating the length to which the Board was going to find employers guilty of unfair labor practices. More recently, in Texas Foundries, Inc., 200 N.L.R.B. No. 249, 31 LRRM 1224, 1226, where the general counsel and the union sought to hold the employer accountable for an unfair labor practice for allegedly invoking the process of the state court in bad faith for the purpose of stopping a strike, the Board held:

"The argument that the state court was without jurisdiction is based on the premise that Congress has vested in the Board and in the federal
courts the exclusive power to regulate strikes,
thereby denying state courts of jurisdiction. As
applied to the particular facts of this case, this
basic premise is invalid. The injunction obtained
by the employer was aimed not at the right to
strike, a subject beyond state regulation where interstate commerce is involved, but at the methods,
alleged to be illegal under state law, by which it
was claimed the strike was being conducted. Decisions of the United States Supreme Court have
made clear that the NLRB does not preclude states

from exercising their traditional police power and injunctive control over unlawful conduct that may be committed during the course of a strike or labor dispute."

Accordingly the Board held that the state court had jurisdiction and that there was not sufficient basis for finding that the state court process was invoked maliciously and in bad faith.

Such cases are far and few between and the National Board's powers are adequate to prevent abuse and to protect its paramount authority when the public interest requires that it be exercised in a case where the jurisdiction of a state court has already been invoked under state law.

The chief reliance in such cases, as has already appeared from the results of a congressional investigation of state labor injunctions, must be in the enlightened self-restraint of state courts. Should any alleged abuse be brought to the attention of the Board in some isolated case, ample authority exists to protect the federal supremacy on a case-by-case basis. The Supreme Court, in the light of the broad experience of its own members, should find no real potential of conflict in such cases where both state courts and the National Board have jurisdiction to provide remedies, for different purposes, under state laws and the National Labor Relations Act respectively which unite in their outlawry, for such different purposes, of the same conduct.

Theoretically, the National Labor Relations Board, had it seen fit to exercise jurisdiction here, might have made different findings of fact than the Pennsylvania court and therefore might have reached a different conclusion. As observed in Cox and Seidman, Federalism and Labor Relations, 64 Harvard Law Review 220,

"This risk, however, is so familiar an aspect of our legal system and is also a matter of such small moment . . ."

that state jurisdiction cannot be superseded on that ground. Congress has created the same risk in the boycott cases which the Board is empowered by Section 10 to determine under Section 8(b) (4) while Section 303 authorizes independent damage suits by one injured thereby in any court having jurisdiction of the parties.

In this case, in the absence of conflict, where the National Labor Relations Board has taken no action whatsoever under its paramount power to prevent unfair labor practices, the state court could properly adjudicate the private rights of the parties under state law.¹⁹

Congress has indicated also, in the legislative history collected under Point I, that it did not occupy the field to the extent of excluding state courts. Note also that Hon. Francis Case presented comparable testimony, (1947) Hearings before House Committee on Education and Labor, 80th Cong., 1st Sess., page 140.

the there is no prohibition in the bill against the individual employer seeking to get relief under the State laws

POINT IV

NO RIGHTS GUARANTEED BY THE LABOR MANAGEMENT RULATIONS ACT, WHICH IS BINDING ON STATE JUDGES; WERE IMPAIRED

In exercising its jurisdiction under state law to adjudicate private rights, a state court is bound to recognize the Labor Management Relations Act as the supreme law of the land. The familiar provisions of Article VI of the Constitution of the United States constitute all laws of the United States, such as the Labor Management Relations Act, made in pursuance thereof, the supreme law of the land and the judges in every state are bound thereby, anything in the laws of any state to the contrary notwithstanding. In this case there was nothing in the state law contrary to the rights guaranteed in Section 7 of the Labor Management Relations Act.

Three decisions of the Supreme Court of the United States have struck down state statutes contrary to the rights guaranteed in Section 7. In Hill v. Florida, 325 U.S. 538, 542, a state regulation of the licensing of business agents of unions subject to the National Labor Relations Act was held to be in conflict with that act because the state law interfered with the freedom of collective bargaining guaranteed by Section 7, and Mr. Justice Black, for the court, stated that:

"The collective bargaining which Congress has authorized contemplates two parties free to bargain, and cannot thus be frustrated by state legislation."

In International Union, etc. v. O'Brien, 339 U.S. 454, 457, 458, a state Labor Mediation Law making provision for a strike notice and requiring that any strike must first be authorized by majority vote of the employees in a bargaining unit required by state regulations was held run patitutional on two grounds:

"Congress afeguarded the exercise by employees of 'cone ted activities' and expressly recognized the right to strike. It qualified and regulated that right in the 1947 Act. "None of these sections can be read as permitting concurrent state regulation of peaceful strikes for higher wages. Congress occupied this field and closed it to state regulation."

The federal Act thus permits strikes at a different and usually earlier time than the Michigan laws; and it does not require majority authorization for any strike.

"Finally, the bargaining unit established in accordance with federal law may be inconsistent with that required by state regulation. Though the unit for the Michigan strike vote cannot extend beyond the Stafe's borders, the unit for which appellant union is the federally certified bargaining representatives includes Chrysler's plants in California and Indiana as well as Michigan. " "Without question, the Michigan provision conflicts with the exercise of federally protected rights." 20

²⁰ In O'Brien, 339 U.S. 454, at page 457, footnote 3, and again in Amalgamated, 340 U.S. 383, 395, footnote 21, the Supreme Court relied on a statement, 93 Cong. Rec. 3835, by Senator

Again, in Amalgamated, etc. v. Wisconsin Relations Board, 340 U.S. 383, 395-396, 398, finding "direct conflict" as to the duration and scope of collective bargaining, shortened and narrowed by the state statute, the Supreme Court held that the Wisconsin Public Utility Anti-Strike Law "conflicts" with the regulation by the Labor-Management Relations Act of 1947 of peaceful strikes for higher wages and Mr. Chief Justice Vinson for the court explained:

Taft that "We-recognize freedom to strike when the question involved is the improvement of wages, hours and working conditions, when a contract has expired and neither side is bound by a contract."

The strikes in both cases were for higher wages and lawful purposes. Even so, Senator Taft said of Amalgamated, the Wisconsin case, in (1953) Hearings before the Senate Committee on Labor and Public Welfare, 83rd Cong., 1st Sess., page 607,

"It must have been conditioned in some way * * * I thought they misconstrued my remarks in the Wisconsin case."

The immediate context, i.e.,

"When " neither side is bound by a contract," of Senator Taft's recognition of "reedom to strike" shows that it was conditioned on a lawful purpose and lawful means. At other points in LMRA legislative history, Senator Taft conditioned a worker's freedom to strike, in express language, e.g.,

''* if he does not violate the local laws'',

(1947) Hearings before the Senate Committee on Labor and
Public Welfare on S. 55, etc., 80th Cong., 1st Sess., p. 1257.

That qualification has been recognized where pertinent, by the
Supreme Court, e.g., in Allen-Bradley Local No. 1111/v. Wisconsin Employment Relations Board, 315 U. S. 746, 750, and International Union, etc. v. Wisconsin Employment Relations Board,
336 U.S. 245, 247-258, 259-260, 263-264 ("What * state laws
might do is not * regulated"). Furthermore, status of
workers is not at issue in the present case of stranger picketing for
an unlawful purpose.

"Michigan, in O'Brien, sought to impose conditions upon the right to strike and now Wisconsin seeks to abrogate that right altogether insofar as petitioners are concerned. * * *

'It would be sufficient to state that the Wisconsin Act, in forbidding peaceful strikes for higher wages in industries covered by the Federal Act, has forbidden the exercise of rights protected by § 7 of the Federal Act. In addition, it is not difficult to visualize situations in which application of the Wisconsin Act would work at cross-purposes with other policies of the National Act."

No such conflict with the exercise of federally-protected rights is here presented. In Amalgamated, etc. v. Wisconsin Employment Relations Board, 340 U.S. 383, 390, in footnote 12, Mr. Chief Justice Vinson expressly noted that:

"Section 7 of the Labor-Management Relations Act not only guarantees the right of self-organization and the right to strike, but also guarantees to individual employees the 'right to refrain from any or all of such activities', at least in the absence of a union shop or similar contractual arrangement applicable to the individual."

In adjudicating private rights, over which the National Labor Relations Board was given no jurisdiction, the state court properly applied state law, which far from conflicting with any rights guaranteed by Section 7 to engage in concerted activities was wholly in harmony with the "right to refrain" expressly guaranteed as an important addition by the Labor-Management.

Relations Act in Section 7. Under the provisions of Section 7 of the National Labor Relations (a)), the courte had firmly established the rule that employees were not given any right to engage in unlawful or other improper conduct and International Union, etc. v. Visconsin Employment Relations Board, 336 U.S. 245, 261-263 and feetnote 15, made it very plain that, under the Labor Management Relations Act, in the light of its legislative history.

"" " obviously persons who engage in or support untair labor practices will not enjoy immunity under the act."

In adding the express "right to refrain" in Section 7, the Labor Management Relations Act has further delimited the kinds of concerted activities which are protected by Section 7. As pointed out in the House Conference Report No. 510, page 39, 93 Cong. Rec. 6372, Legislative History 543, page 49, 93 Cong. Rec. 6372, Legislative History 543, page 41, 82, 260, rate 15, supra, as well as in Senator Taft's summary of the principal differences between the conference agreement and the bill which the Senate passed, Legislative History, page 1539:

in the declaration of policy to the emended National Labor Relations Act adopted by the conference committee, it is stated in the new paragraph dealing with improper practices of labor organizations, their officers, and members, that the 'climination of such practices is a necessary condition to the assurance of the rights herein guaranteed.' This in and of itself demonstrates

Even without such additional specific language, there was always implicit in Section 7 of the National Labor Relations Act the right to refrain from concerted activities. That was made very clear by Senstors Wagner, Borah and Walah in the debates on the National Labor Relations Act. 79 Cong. Rec. 7569, 7570, 7571, 7650, 7658 and 7661. Senstor Wagner stated (at page 7571) that:

"It does not ever imply that any employee can be forced to join a union, except through the traditional method of a closed-shop agreement with the employer."

Senator Borah stated, at page 7650, that:

"I want to see the working man free to join a union or to remain out of a union."

[&]quot;The importance of this right to retrain was emphasised in the Conference Committee Report, as we have seen, and throughout the legislative history which may profitably be traced as far as the Hearings before the Committee on Labor and Public Welfare of the United States Senate, 80th Congress, ha Senion, on 1, 65 and 5, J. Res. 22, pages 10th and 1497. Renator Ball drew from William Green, of the American Pederation of Labor an explicit statement:

[&]quot;Mr. Green. Nobody is point to interfere with the exercise of that right. He can belong to a union or he can stay out of a union." (page 1002) Senator Bull was much concerned that,

[&]quot;The unfair banner line has been used to organize employees against their will to a tremendous extent in this country." (page 1497.)

Senator Walsh, the committee chairman, in explaining the bill, stated, at page 7658, that:

"First of all, it does not require or request any employee to join any organization * * ***

The National Labor Relations Board from the beginning recognized that the right to refrain from concerted activities was implicit in Section 7 of the National Labor Relations Act of 1935: National Electric Products Corp., 3 N.L.R.B. 475, 499; Borg-Warner Corporation, 44 N.L.R.B. 105, 116; Pittsburgh Plate Glass Co., 66 N.L.R.B. 1083, 1092, 1094-1095.

The respondent did not permit its employees freely to make their own choice, as the law of the land requires. In Borg-Warner Corp., 44 N.L.R.B. 105, 116, failing to find that there was, as the union asserted, an oral secret side agreement that the company would "take care of" any employee who failed to become or remain a member of the union, the Board did find that the company did "take care of" certain employees and held that "respondent thereby unlawfully encouraged membership in the Union. "thereby "restraining, and coercing its employees in the exercise of the rights guaranteed in

In Pittaburgh Plate Glass Co., 86 N.L.R.B., 1083, 1004-1095, where the employer's plan of cooperation with a C.L.O. union lacked sufficient certainty, in the opinion of a majority of the Board, to protect it union the proviso to Section 8(3), the Board said:

In National Electric Products Corp., 3 N.L.R.B. 475, 499 the employer threatened to deduct from the wages a sum equivalent to current Brotherhood dues, thereby encouraging membership in the Brotherhood and the Board said:

we find that the respondent * * by urging, persuading and warning its employees to join the U.M.W. * * * restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

Senator Taft, in his supplementary analysis of the Labor Management Relations Act, 93 Cong. Rec. 6859, Legislative History, etc. 1623, as an expression of legislative intent, concurred in that construction of Section 7 and explained the explicit reference to "the right to refrain" as follows:

"Section 7. In this section guaranteeing the right of employees to self-organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, there has been inserted the language, and shall also have the right to refrain from any and all of such activities * * * * * * There is similar language in the Norrie LaGuardia Act * * * Moreover, the Board itself has held that a right to refrain from the exercise of the rights guaranteed in section 7 was always implicit in the Wagner Act (See Pittsburgh Plate Glass Co., 66 NLRB

Chairman Millis took no part in the Berg-Warner case but Millis and Brown, From the Wagner Act to Taft-Hartley (University of Chicago Press, 1950) at page 320, later revealed concurrence in this construction of Section 7 and states that

[&]quot;Wiscomin and Minnesots specified what was always implicit— the right to refrain from concerted activity."

See also Allen-Bradley Local No. 1111, etc. v. Wisconsin Employment Belations Board, 315 U.S. 740, 741 (footnote 1) and 750, where the Supreme Court poticed the "right to refrain" expressed in the Wisconsin Act and said of Section 7 of the National Labor Belations Act that:

[&]quot;And we fail to see how the inability to use mass picketing, threats, violence, and the other devices which were here employed impairs, dilutes, qualifies, or in any respect subtracts from any of the rights guaranteed and protected by the federal Act."

i 1063.) The new language therefore, merely makes mandatory an interpretation which the Board itself had already arrived at administratively."

The Supreme Court of Pennsylvania arrived judicially at the same construction of its Labor Relations Act which had enucted verbatim the provisions of Section 7 of the National Labor Relations Act of 1935. Section 5 of the Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168, 1172 (43 Purdon's Statutes, Section 211.5) provides that:

"Employes shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other-mutual aid or protection."

"They seem to prefer to exercise the right of not joining any union, a right which is protected by section 5 of the Pennsylvania Labor Relations Act of 1937 * * *

"Defendants' purpose in picketing was to require plaintiffs to force their employes to join the union or to discharge them and employ

others who are members of the union. Such a purpose is clearly unlawful

The public policy of Pennsylvania applicable to this case is thus identical with Congressional policy and is an important and widely-accepted one. As stated in the 1950 Annual Survey of American Law, 389-390.

"If the picketing is not stopped, and if the employer wants to stay in business, he must inevitably do what he can to induce his reluctant employees to join the union. * * it is flatly inconsistent with the modern labor relations principle, which hinges representative status on uncoerced majority standing."

That principle of employee free choice is recognized in many jurisdictions, some recent illustrations being found in Blue Boar Cafeteria Co. v. Hotel and Restaurant Employees, etc. — Ky. — , 254 S.W. 2d 325, 339 ; Way Baking Co. v. Teamsters, etc., 335 Mich. 478, 56 N.W. 2nd 357, 361-363, certiorari denied — U.S. — , 73 S. Ct. 939; Hagen v. Culmary Workers, etc., — Wyo. — , 246 P. 2d 778, 785-788. Many states have also adopted labor anti-injunction acts, along the line of the Norris-LaGuardia Act, and the Pernsylvania Anti-Injunction Act of June 2, 1937, P. L. 1198 (43 Purdon's Statutes, section 206-b) in Section 2(a) similarly declares the public policy that a worker shall have full freedom of association and that

[&]quot;* * he should be free to decline to associate with his fellows * * *"

In Building Service Employees, etc. v. Gazzam, 339 U.S. 532, 538, 540-541, the Supreme Court recognized the importance of this public policy and said:

"Under the so-enunciated public policy of Washington, it is clear that workers shall be free to join or not to join a union, and that they shall be free from the coercion, interference, or restrainc of employers of labor in the designation of their representatives for collective bargaining. Picketing of an employer to compel kim to coerce his employees' choice of a bargaining representative is an attempt to induce a transgression of this policy, and the State here restrained the advocates of such transgression from further action withlike aim. * * * That State policy guarantees workers free choice of representatives for bargaining purposes. * * * free choice as to whether they wish to organize or what union would be their representative.

"The public policy of Washington relied upon by the courts below to sustain this injunction is an important and widely accepted one."

No federal right, therefore, was impaired when the state court concluded that the picketing in this case would, if allowed, result in coercing Central to resort to compulsion to force its employees to join the Teamsters in violation of that state policy protecting employees' free choice. There is nothing in the state law and important state public policy applicable to this case contrary to Section 7 of the Labor Management Relations Act (see also Appendix B, infra). Suffice it to say that Lastonic rights guaranteed in Section 7 and in the Labor Management Relations Act constitute the supreme law of the land and under Article VI of the Constitution of the United States the judges in every state shall be bound thereby. Section 7 of the Labor Management Relations Act/thus provides a rule of decision, rather than a pre-emption, so far as concerns the jurisdiction of the state courts to adjudicate private rights under state law. The state law in this case is not contrary to the Labor Management Relations Act. No rights guaranteed by the Labor Management Relations Act. No rights guaranteed by the

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed. The question presented should be answered in the negative. The Labor Management Relations Act of 1947 does not oust the jurisdiction of a state court, in adjudicating private rights, to enjoin picketing for the purpose of coercing an employer to compel its employees to become members of the picketing union, where the decision was based upon state legislation which made that purpose unlawful. The state statute guarantees workers free choice of representatives for bargaining purposes. Concerted activity for that unlawful purpose was not privileged and the state court had jurisdiction, where very substantial harm was intentionally inflicted, to adjudicate Central's private

Board has not exercised its discretionary jurisdiction, in the public interest, to prevent such tortious conduct as an unfair labor practice also outlawed by Section 8(b)(2). In Section 10 of the Labor Management Relations Act Congress did not authorize the National Labor Relations Board to adjudicate private rights and did not take in hand that subject wisely left to the insulated laboratories of the forty-night states. Subject to the paramount authority of the National Labor Relations Board, in the unlikely event of conflict between public and private remedies, and subject to the rights guaranteed by Section 7 binding as supreme law upon state judges, the Congress expressed its deliberate choice and consent, illuminated by he legislative history, that state courts should continue their indispensable function of adjudicating under state law our precious American heritage of private rights.

Respectfully submitted, James H. Booms, David S. Konn, Commed for Petitioners.

APPERIOR A

THE PURPOSE OF TEAMSTERS' PICKETING

Summary of some supporting evidence, Teamster argument as to coercion of employees considered

We summarize, in the following sixteen numbered paragraphs, some of the supporting evidence that, as the state court reasonably found, the purpose of the picketing was to organize from the top.

- the pickets was not addressed to Gentral's employees (R. 18 and 21, Central's Exhibit No. 1, finding 16 at R. 174). The signs did not say "Employees of Central" join Local 776", etc. The signs stated to facts to persuade or inform the employees. The signs announced a demand, stating what it was that "Local 776" wants." That demand, in harmony with surrounding facts, was for the employer, in this case Central Central was plainly notified that "Local 776" wants.
- (2) Basic demands, in the background of this picketing, addressed by the Teamsters to Central (cf. R. 64), included prior requests to Central's owner (R. 150) "To ask him to or-

gamise" and (R. 40) "to join in with them, get my men to join up with them." Central has consistently achered to a hands off policy (R. 25 and 40, findings 11 and 12 at R. 173), not objecting to any of its employees joining, but refusing to put any pressure on its employees to join the Tourstein.

- (3) Contamity of purpose in the long eampaign of the Teamsters against Central is dear. Alan Kline, business agent of the Teamsters for more than a decade (R. Als and 150), conceded on cross examination (R. 138) that "We have been continually attempting to organise them" and that (B. 147) he couldn't get Central's drivers to join Teamsters.
- (i) Describetion of Contral a connecting carriers by the Teamsters has been demenstrated. Local 776, with "approximately 400" (R. 115) members, and similar Teamster locals in Resiling. Lancester and other related areas (R. 97 and 162) have the strongest legal form of union security contracts with a decen and more over-the-road common carriers by motor reside (R. 27-28, 48, 76 and 21 of R. 95) that had for many years used Centra) in Harrisburg (R. 21, 22, 44, 46 and 47, findings 3. 4. 24 at R. 176) for their local deliveries. The Teamsters, while no longer able to require closed-shop contracts, under Section 8(a) (3) of the Federal Labor Management Relations Act, had uniformly secured union shop contracts requiring that employees hired by such carriers must, within 30 days, join the Teamsters (R. 129,

see R. 160 and 165, finding 23 at R. 176) and must as a condition of exprovment socialists, good standing in the union. These constacts provided that the connecting earrides could not require their men to go through a picket line (R. 76, 92 and 93, finding 31 at R. 177).

- (5) importantion of the pickets (E. Li and 17) was given by the common very commetting entries must no longer to business with Central Christophy the packets didn't understand that they were appealing to Central's employees or to their reason and intelligence. They were atmag at Central at a volumerable densitive spec, Central's traffic of a quarter of a million pounds of freight a day handled in competion with unionised over-the read carriers. If Central's employees ignored their that meant nothing to the pickets. If Central's someoting carriers had continued to do business with Central, then the pickets would have been embarraised.
- (6) Failure to make known any fraction to cross the picket line (R. 42, 47, 52, 54, 55, 56 and 57) gives rise to a very strong inference that the Teamsters intended to put pressure on Central so long as its men did not join the Teamsters. Drivers approaching the picket line could so easily have been advised that it was all right to pass, that they could, without embarrassing the pickets, do business as usual with Central. The pickets would still have been advertising to Central's men, had that been their fundamental function. But

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 " this decided was easier valuated and potentially proficious and processes on this employer
 by pickets was continued in the tariffic pattern
 of a passent organising compagn by the Teamsters "See Appendix B, tolars).
- (8) Home to bone splicitation for membership was no attempted by the Tempeters (R. 82, 26 and 128). The excuse given, not found credible, was that, notwithstanding a membership of over 400 men, the Teamsters "didn't have the personnel necessary" (R. 128) to visit from nine to twenty Central men. The same excuse, that the Teamsters "didn't have the manpower" (R. 75) was given as previously noted for withdrawing

pickets from Hill Express which had four employees. The Teamsters just did not contact Central's employees in an effort to have them become members (H. 75, 91, cf. R. 155 and 156, finding 26 at R. 176-177).

- was extensive. Central lost a quarter of a million pounds of freight per day (R. 26-27, finding 25 at R. 176). The Teamsters hit to hurt. They aimed a knock-out blow. They connected with Central's chin of custom. They paralyzed (R. 26) Central's business. The over-the-road carriers, all in the Teamster fold; ceased doing business with Central The Desmaters pretended to see no injury, the business agent saying (R. 91) 'I don't realize how it could greatly damage." (R. 25) "I don't think any harm is coming to you," (R. 26) "I don't see any harm from this." The plainly intended and necessary result of the facketing as conducted was the loss by Central of hundreds of dollars a day.
- (10) Joining of the Teamsters by none of Central's employees during the period of the picketing (R. 83, 151 and 155), or during the preceding decade, further evidences the lack of appeal by the Teamsters to the men. The Teamsters had nothing definite to offer the men, whose wages were above the union scale (R. 39-40, finding 14 at R. 173). The Teamsters must have known (cf. R. 136) from experience that the men weren't interested. The Teamsters couldn't get the drivers for Central to join (R. 147).

- (11) Enowiedge on the part of the Teamstern of the extent of the injury resulting to Central from the picketing is indisputable (R. 25, 26 and 36, findings 20, 21, 22, 35, 38 at R. 175-176, 178). The Teamstern failed to comply with Central's request that they correct a a tuation which it was in their power to correct if they were not aiming at Central.
- (12) A letter was sent by the Teamsters to related teamster locals, at Reading, Lancaster, and other central Pennsylvania cities, on June 1, 1949. in anticipation of this organizing campaign against Central and other local dray and freight carriers (R. 97). It advised that this would not create the usual strike situation. The purpose of the letter was to eliminate reference of the matter to and approval by the Joint Conneil, in view of Article XII, Section I, paragraph (c) of the controlling Constitution of the International Brotherhood of Teamsters (R. 140, 149 and 154). The business agent or secretary treasurer of each such local in due course received the letter and was cautioned not to "misunderstand" (R. 100-101). There was no time for the members generally to know of it and the usual willingness to lend a belping hand in any situation was recognized (R. 98). The usual orders (R. 53), "don't cross" the picket line, followed.
- (13) Members were neither consulted nor advised by Teamsters' business agent as to this action against Central. The members had met the

become Sunday in May (R. 152) and there was no discussion or mention of the matter (R. 146, 152). The campaign was thereafter formulated in the latter part of May (R. 75). It was a Business Agent brain child (R. 140 and 154-155), Neither the Teamsters' lawyer (R. 153), nor the Joint Opinicii (R. 143), nor the members were consulted. The business agent said that he could not instruct his men not to cross the picket line (R. 47). Receiving no instructions to the contrary, the members did not cross the picket line (R. 55, 57 and 36, findings 24 and 30 at R. 176, 177).

- (14) No instructions were given to the pickets (E. 39, finding 22 at R. 176). They were paid pickets, not truck drivers and not Central employees (R. 75 and 85). Such a picket, when asked "Is this a picket line?" answered in the affirmative (R. 53). The pickets talked to drivers of connecting carriers who approached the picket line, and the drivers pulled away without delivering their freight intended for Central (R. 29). The pickets invoked the well established labor union practice (R. 28, 44, 47, 55, 56, 57, 93 and 95, findings 24 and 30 at R. 176, 177) not to cross a picket line, and would have been embarrassed (R. 43 and 47) by non-cooperation since they had no contrary instructions.
- sters. In anticipation of this organizing campaign/ they advised affiliated locals that "the object " is to enroll among our membership the truck drivers, helpers or warehousemen em-

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ployed by? Central (Rx 97). President and business agent Long testified that "the purpose" was. to get them to join the union (R. 74). Scarctarytressurer and business agent Kline testified that it was an appeal to Central's employees to join the nuion (N 89). Both were asked by their counsel the identical question ('Are you picketing for my other purpose to (R. 78 and 89) and both gave verbally identical answers (R. 73 and 89), "No, none whatsoever." If the "none whatsoever the "none whatsoever" disbelieved by the Changellor who saw and heard the witnesses, as they were, then the elaimed purpose even if believed, was entirely consistent with the co-existence of a secand traditionally-related purpose of conscripting the employer, Central, to get the men to join. Who got the men to join was secondary, and the employer was the only remaining practical means, after a decade of fruitless effort. To get the men (O JOH Was all administration less

(16) The place picketed was not Central's main office, but a Reading platform or terminal a mile distant (R. 1° and 21, findings—and 2 at R. 171). To that platform came some fifteen Teamster-organized over the road carriers that for years had used Central as pickup and delivery carrier for a quarter million pounds of freight daily (R. 21, 22 and 27, findings 3, 4, 24, 34, 38 at R. 171, 176, 178). The reasons given for the choice of the place picketed were contradictory and not credible. Business Agent Kline testified (R. 89) "I didn't want to carry the impression that we were including the organization to office

workers." Business Agent Long (R. 78) testified on the contrary that "when we wanted to establish the picket line we took the telephone directory." But the telephone directory since April of 1949 had listed (R. 86) the main office. Kline conceded that he was told (R. 90) that Central's owner "was at" the place picketed and the employer (R. 21 and 39) "saw these " " signs" as planned.

It may not be amiss to add that at the final hearing counsel for Teamsters himself volunteered the statement of record (R. 151) that "The employees were anti-union."

The object of the picketing, under the circumstances appearing in this record and the findings of the trial court, was transparently not vain repetition of fruitless efforts to convince some twenty local dray drivers who had long since decided that the Teamsters had nothing attractive to offer them: See Haber & Fink, Inc. v. Jones, 98 N.Y.S. 2d 393, 397, 398 (" " the object of the picketing is transparently not to persuade employees"). The Teamsters have suggested (at page 13 of their printed brief before the Suprame Court of Pennsylvania) that it was "equally plausible" that "Defendant may have been seeking to coerce the employees to join the Union." It has, of course, been true in many cases, as noted in N.L.R.B. v. International Rice Milling Company, 341 U.S. 665, 671, that

"The picketing was directed at the " " employees and their employer in a manner traditional in labor disputes." Were the purpose thus suggested lawful and one of the purposes of the picketing, still the fact that one of several purposes is lawful would be irrelevant because as recognized in Restatement, Torix, Section 79C, and restatement by the National Labor Relations Board in Medford Building & Construction Trades Council, 96 NLRB 165, 166.

"" " it is settled law that picketing in furtherance of both a lawful and unlawful objective is unlawful."

Besides the lawfulness of any such additional purposes to course employees is not sustained by the Teamsters' reliance on Building Service Employees International Union v. Gazzam, 339 U.S. 532, 539-540, in effect affirming 29 Wash. (2d) 488, 88 P. 2d 97, 11 A.L.R. 2d 1330, where the Washington statute under consideration, as Mr. Justice Minton expressly states,

"" * * only prohibits coercion of workers by employers."

See also Petro, Free Speech and Organizational Picketing in 1952, 4 Labor Law Journal 3, 7-8. Quite a different situation is presented in Pennsylvania where Section 6(2) of the Act of July 7, 1947, P. L. 1445, 1447 (43 PS, Section 211.6) makes it an unfair labor practice and hence an unlawful objective (Restatement, Torts, Section 794) for a labor organization to intimidate, restrain

pose and with the intent of compelling such em-

ploye to join or to refrain from joining any labor organization * * *"

In any event it would not be sufficient to show that picketing was directed at the employee where any such purpose, if established, was quite consistent with the co-existence of a purpose also to direct the picketing at the employer; when the Teamster officials testified that the picketing was directed at the employees and denied, ipalasims verba, that there was any other purpose whatsoever for the picketing, the verbally identical "none whatsoever" (R. 73 and 89) answers of these witnesses whom the Chancellor saw and heard were not believed by the state court.

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APPENDIX B

ORGANIZING FROM THE TOP

Organizing from the top, the purpose of the picketing in this case, is a perverse but persistent practice of a few unions that seek to add to their numerleal membership by coercing employers to force their employees to join a union they do not choose to join Congress has had occasion to notice with disapproval this undemocratic secencive practice of organizing through employers whose business life the union threatens to throttle through tied-up truck transportation, a typical Teasuster tactic. That means in the wisdom of Congress, is not justified ly the end. The employees are to be organized, if at all, through voluntary exercise of their fundamental right of free choice declared in Section 7 of the Labor Management Relations Act. The Labor Management Relations Act, with its legislative history in 1947, and its continning story through the 1953 congressional hearings. supports the state law under which the state court reached a sound judgment in the exercise of inrisdiction in accordance with the intent of Congress.

As summarized in the scholarly text of Millis and Brown, From the Wagner Act to Taft-Hartley, 246, 247, 649:

"The Taft Report [Senate Report No. 105, 80th Cong., 1st Sess., page 2] in 1947 spoke of

the one-sided character of the Act itself, which, while affording relief to employees and labor organizations for certain undertrable practices on the part of management, denies to numagement any redress for equally undestrable actions on the part of labor organizations." " "coercion by employers was outlawed, while the [National Labor Relations] Act did nothing about coercion, intimidation, and violence by unions in organizing or on the picket line. There was still a strong case for the original plan of the Wagner Act; nevertheless, that policing of employees' activity in such cases was better left to the ordinary courts and state law-enforcement authorities than to the slow administrative process of a federal agency."

however, that the Act prohibited interference by employers with the right of free choice by employees but did not specifically and effectively prevent such interference by unions, when, by boycott, strike, or other show or threat of economic power, they attemped to coerce employers to violate the Act. Some unions were so powerful that they could and sometimes did coerce employers, especially small employers, and their employees, by these methods rather than following the democratic process of organizing people and proving their right to recognition as majority representatives. This was an especially serious problem in some areas, as California, and with some unions, as the Teamsters * * Here there was a strong case for an 'equalizing amendment.' *

Unions which had been in the habit of organizing from the top down, through the use of boycotts or picket lines, rather than organizing the people themselves, normatriy had to change their faction; and this was a gain from the [Labor Management Relations]. Act. Organization was made slower and more routly, but in these cases the interest of democratic self-organization was served by the accessive of following the methods which had always been intended by the Wagner Act." (at page 549)

(1) The intention to bur such economic coercion on the part of labor organizations was plainly expressed in the Senate Debabe by Senator Turk, 93 Cong. Rec. 4022, 4023, 4024, who pointed out that unions as well as employers had vast because power of holding a man's job in these bands and said:

"I cannot see any difference. If a may is invited to join a union its member, ought to be able to persuade him to join but if they should not be able to persuade him they should not be permitted to interfere with him, coerce him, and compel him to join the union."

"The main threat was 'Unless you join our union, we will close down this plant, and you will not have a job.' That was the threat, and that is coercion—comething they had no right to do. " "

"We had a case last year where a union went to a plant in California and said, 'We want to organize your employees. Call them in and tell them to join our union.' The employers said, 'We have not only control over our employees. We sensor tell these, ember the lettered Labor Roletters Act. They said. 'If you don't we will picket your plant'; and they did picket it, and doned it does for a scools of tensories."

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"I have here a copy of the Daily Oktahoinan " " a local judge " " found the Teamsters" " " guilty of contempt of court for picketing an establishment although no members of the union were employed there, in an effort to coesce those etted), 19th Congress, Int Sien, hearings before the Benate Committee on Labor and Public Welfare on 8. 55, etc., 989-980, Sensior Ball, the committee chairman Senator Taft, and Senator Aiken, discussed such restricte and die stat William Descript de American Verschaften de State de

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"Renator Alken, And I do believe that they are hurting all unions when they indulgs in those practices.

"I have read the reports of the efforts made to force shopksepers, particularly the butchers, to join the teamsters' union, and I have often

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discharge the employees who did not continue to Market Constitution of Them pay dues.

"This no knowless provides of organizing labor this brea a blot on the entire labor move-

Teres. Were those strates directed at any of more unions.

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"Security Ball. It would appear then Mr. Rice, that there was no attitle at these particular plants; but that the Transsters were using the secondary boycott to try to force these employees into that particular union, lan't that the situation i

"Mr. Rice. That is correct. The situation is that the motor carrier himself is not involved in/ any controversy with his own employees. employer to problished by law from compelling his employer to join a union, then the union should be probablished from trying to force him to do that thing?

(8) During the 1947 Conste licarings, e.g. 986, 1497, 1867, 1868, Senator Ball repeatedly expressed, as in the Senate debates, the intention to get rid of such economic searchon, saying:

We wanted to get rei of the recordary boycott which takes also when the union has a employees to the plant nicketed, but simply establish a batter fire and say it is unfair, then the teamsters refused to deliver. That is the method they are using in a good many cities to force organization. (af page 936)

"Well, there is a lot of difference between a picket line and merely an unfair beamer line. The unfair beamer line has been used to organize employees against their will to a tremendous extent in this country." (at page 1497)

The worst cases I have heard of are those wherein unions do not even try to organize the amployees. They go to the amployer and demand that he sign a closed shop contract. He will not do it. They throw a banner picket line in front of his plant and then the teamsters boycott deliveries to and from the plant. That kind of boycott for most small employers who do not have much working capital will bankrupt them inside of 2 or 3 months." (at page 1938)

- (9) Similar testimony and informed judgment condemning organising from the top appears in the 1947 House hearings before the Committee on Education and Labor, 80th Cong. 1st Sess., at page 107 where Honorable Howard W. Smith, alieding to hundreds of similar instances, presented to Chairman Hartley and the committee a small California restaurant man's
 - "" case history of a union's activity in its endeavor to pressure me into forcing my employees into the Cullinary Workers' Union against their will."
- (10) In the 1953 House hearings before the Committee on Education and Labor, 83rd Cong., 1st Sess., on matters relating to the Labor Management Helations Act of 1947, pages 1872, 1374, 1377, there is additional testimony, again from California, on behalf of some small bakeries that:

"What we object to is, instead of them selling themselves to the employees on the benefits they have to offer, the union wants to get its contract by what we call organizing at the top, namely, forcing the employer through sconomic pressure to sign the contract whether the employees want it or not. " " (at page 1372)

"That is the only way they do operate that I know of in the teamsters. " * the teamsters have got the weapon. " * it is to stop transportation, and you will starve out the employer. " * " (at page 1376)

[&]quot;* * * It is a standard method.

"Now, some of them, where they cannot get what they want that way, will go ahead and organize the employees directly, but their first attempt always is to try to force the employer to sign up regardless. That is their essiest and cheapest way of operating. They have got the strength generally to do that with many enployers."

(11) We must be content at this time to quote, from other illustrative material in the 1953 House hearings, supra, the following significant colloquy between Representative Wainwright of New York and C.I.O. General Counsel, Arthur J. Goldberg, at pages 2749-2750.

"Mr. Wainwright. Well, organizing from the top is your example of placing pickets outside of a nonunion seller of clothes. The union has not made the slightest attempt to go in and talk to any of those men. They have passed out no literature. Are you familiar with the Sears case, the attempt in New York to organize Sears?

"Mr. Goldberg. I am not familiar with the Sears case, but I am very familiar with the Richmond case [see decision a few days earlier, April 14, 1953, in The Richmon Brothers Co. v. Amalgamated Clothing Workers, etc., 53 A.L.C. 831, 835], and in that instance the union is making a very vigorous attempt to organize employees at Richmond Clothing Co.

"Mr. Wainwright. Well, in the Sears case * * * Sears said they would not organize their workers. * Bo they put four pickets outside the warehouse. Not one hit of clothing moved inside or putside of that warehouse. In other words, through the medium of just four pickets, the union was trying to force Bears, Roebuck to organize its thousands and thousands of employees; which would cost the union not one single cent. * Now, in other words, that type of soncuct you feel is absolutely O.K. to enforce on management?

"Mr. Goldberg. I do not believe in organizing unions from the top.

"Mr. Wainwright. That is the point.

"Mr. Goldberg. I do not believe that organizing throns in that way makes for good unions. I don't believe it is a sensible, sound way, and I don't believe it is productive of good relationships or of good unions."

(12) In the 1953 Senate hearings (hereinafter so cited) 83rd Cong., 1st Sess., Senate hearings before the Committee on Labor and Public Welfare on Proposed Revision of the Labor Management Relations and Act of 1947, at page 2335, a witness from Illinois testified that:

"The union tactic is * * * to throw stranger pickets around the plant at once. * * *

"The employer, of course, is faced with economic disaster unless he gives in and forces upon his employees a union which is not in fact or even pretense their true representative. "I have had three such cases in the last 6 or 7 months. Up to now I must say in fairness to the unions this practice has been confined to only one union, that is the teamsters union. " * *

"In one case, with which I am personally familiar, economics compelled the employer to give in and sell himself and his employees down the river."

(13) A witness from Texas, who elicited an interested question from the Chairman, Senator Taft, testified at the 1953 Sénate hearings, supra, pages 921, 922, that:

"Prior to section 14(b) and the adoption of the Texas right to work statute, which was adopted by the 50th Texas Legislature in 1947, it was the common practice of many unions, even though they did not represent the majority of the employees at a particular place of business, or in many instances where they didn't represent any of them, to nevertheless picket such places of business for the purpose of compelling the employeer " to compel such employees to become members of the union regardless of their voluntary choice or free will in the matter. That mortypically and frequently occurred in the case of smaller business establishments " "

"It is now possible, in Texas, as I note that it is in the other States having similar right to work statutes, to go into the State court and secure an injunction restraining picketing to compel the employer to require his employees to become members of the union, as such picketing would be picketing for an unlawful objective.

"The Chairman. How long has your law been in effect?

"Mr. Jeffers. Since 1947, Mr. Chairman. Prior to that time the closed shop or the union shop was lawful under Texas law.

"Our Texas statute has been sustained as to constitutionality, as these other State right-to-work statutes have." [Lincoln Federal Labor Union, etc. v. Northwestern Iron Co., 335 U.S. 525]

(14) Senator Taft displayed deep interest in the catspaw plight of trucking

"" * " the most potent secondary boycott weapon known"

forcefully presented in the testimony, 1953 Senate hearings, supra, page 733, 742, and statement, 743, 744, of a representative of American Trucking Association as this witness stated,

"Teamsters' General President Dave Beck recently stated that plans have been laid to bring his organization's membership up to 3 million within the next decade.

"Motor truck operators who are told by the teamsters to stop picking up or delivering freight, to an establishment designated 'unfair' by the union, under threat of having their 'barn' shut down, usually do so. " * "

"With the vastness of our industry and with the high degree of organization of for-hire motor carriers by the teamsters—the United States Labor Department reports them to be 90 percent organized—one cannot help but be impressed by the awsome prospects of the potential secondary boycott this combination of circumstances affords. Cutting across every line of freight communication in manufacturing, processing, distribution, and retail industries, trucking presents to unions an ideal weapon to effectuate and enforce secondary boycotts."

We find the following pertinent colloquy at page 739 between the trucking representative, Benjamin R. Miller, and Senator Taft:

"Senator Taft. We have had a lot of cases where the truckers were forcing employers to require their employees to be organized, or to join the trucking union, although they were warehouse employees or otherwise.

"Mr. Miller. That is correct, Senator Taft.

"Senator Taft. The act attempted to stop that."

(15) Senator Taft, in discussing with C.I.O. General Counsel, Arthur J. Goldberg, the "law of the jungle" that proceded the National Labor Relations Act, and the contrary policy adopted by Congress of "holding everybody to fair dealing" stated, in the 1953 Senate hearing, supra, at page 583, that:

you have a method of going in and persuading

the employees that there ought to be a union. If you cannot persuade them, then there ought not to be a union and there ought not to be any vidirect pressure on their products and their work to make them unionized."

In short, informed opinion supports the wisdom of Congress in buttressing the important employee-free-choice state policy here applied by a state court in adjudicating the private right of an employer to be free from the harm inflicted by this roundly-outlawed tortious organizing from the top.

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Supreme Court of the Anited States

October Torre, 1953 No. 56

JOSEPH GARRER and A. JOSEPH GARNER, trading to CENTRAL SYCHAGE & TRANSPER COMPANY, Paristoners

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1953 No. 56

Joseph Garner and A. Jenerth Garner, trading at Control Stories, And Brancher Company,

Tenmeters, Chauffaurs and Helpers, Local Union No. 176 (A.F.L.), Rd. Long, Devident, Allen Kline, Business Manager, its other officers and agents.

On writ of Certiorari to the Suprisme Court of Pennsylvania

REPLY ERIEF FOR PETITIONERS

This limited raply bates, by way of explaining its structure and in sympothy with the problem contracting distinguished opposing coursel, has been dictated, in the limit minutes permitted by the extensions of printing after a reading of the briefs or particus of briefs thus far made available to counsel for petitioners, including a Afry-three-page supergration draft of most of BRIEF FOR THE RESPONDENTS. A supersy-three-page spectration draft of most of BRIEF FOR THE RESPONDENTS. A supersy-three-page spectration draft of BRIEF OF CONCRESS OF REDUSTRIAL ORDANIZATIONS, ASSECUS CURLAR, and thing there begs printed BRIEF OF AREKICAN PEDERATION OF LABOR AMICUS CURLAR. These brief pay supprisingly little attention to the BRIEF FOR PETERIONERS, and are all organized on different bases, but in the main the authorties (which may conveniently be correlated with petitioners'

discussion thereof through the page referencess given in petitioners' table of citations) and contentions have already received adequate treatment in the BRIEF FOR PETITIONERS. Some reply on the following matters in these several excellent opposing briefs considered in their order of presentation may assist the court in its analysis and decision of the case presented. All agrees on this, that the proper construction of Section 10(a) of the Labor Management Relations Act is determinative of the issue of state court jurisdiction presented.

A. BRIEF FOR THE RESPONDENTS CONSIDERED

The brief for the respondents presents five contentions after adverting to certain facts deemed favorable (and certain offers of evidence which are not before this court) without any discussion of the petitioners' statement or the countervailing evidence collected in petitioners' brief in Appendix A supporting the finding of fact by the state trial court as to the purpose of this picketing. Respondents' Point V on free speech is not, as we understand the petition for certiorari and this court's action in granting that petition, before this court, but has been thoroughly discussed by the state trial court (R. 193-196 and 227) and by the Pennsylvania Supreme Court (R. 231-232) and more recently in LOCAL UNION NO. 10, etc. v. GRAHAM, et al., --- U.S. --- 73 S. Ct. 585. With reference to respondents' Point II dealing successively with federal outlawry and with federal protection as bases for preemption, we call attention to the discussion in Points I, II and III of BRIEF FOR PETITIONERS as to the intention of Congress to continue state court remedies for federally proscribed union activities, and we refer to the discussion under petitioners' Point IV and also Appendix in reply to respondents' claim of congressional protection as an alternative basis for pre-emption. We proceed now to consider some matters appearing in Respondents' Points I, III and IV.

HESPONDENTS POINT I AS TO PRIVATE RIGHTS

Respondents in their Point I apparently accept the ex-position and citation of authorities (except for some of the state court decisions which they attempt to distinguish et mother point) under Point II of BRIDE DOR PEN-TIONERS and content themselves primarily with a contention that Petitioners fail to support their naked assertion that the rights which they claim are private in nature. Respondents further suggest, quite erronsously, that the course of the state course authority if it estimate all significant found as they word it in the legislative delegation to it to apply state senctions to certain violations of the Labor Management Relations Act. Petitioners reply that the state court proceeded under the sociation law of toris. The private right may therefore be defined as a legally-protected interest for the investor of which the law entitled the injured person to maintain an action: See Restatement of Torte, Sections 1, 7 and 775 and accompanying comments and the introductory note in Volume 4 including pages 94 and 95. The fountainhead of analysis, as explained in Frankfurter and Greene, The Labor Injunction, page 24, is Mr. Justice Holmes in his paper "Privilege, Malice and Intent," 8 Harvard Law Review 1, and in his opinion in PLANT v. WOODS, 176 Mass, 492, where the majority agreed with the dissent of Mr. Justice Holmes, then Chief Justice of Massachusetts, that the concerted activity of the defendants in threatening boycotts and strikes was "actionable unless justified." PLANT v. WOODS; 176 Mass. 492 supra, has been followed in Pennsylvania in such landmark decisions as ERDMAN v. MPTCHELL, 207 Pa. 79, 93 and PURVIS v. UNITED BROTHERHOOD, 214 Pa. 348, 355,

350-360, so that the common law of Pennsylvania is clearly in second with the Restatement of Torts, Section 775, that:

"Workers are privileged intentionally to cause harm to another by concerted action if the object and the means of their concerted action are proper; they are subject to liability to the other for harm so caused if either the object or the means of their concerted action is improper."

The state trial court vindicated petitioners' private right thus established by the common law of torts as the law of Pennsylvania.

The only relevance of state labor relations legislation was that it, in accordance indeed with the constitutional law of Pennsylvania as declared in ERDMAN v. MIT-CHELL, 207 Pa. 79, 90-92, supra, had definitely set the face of the state law against the object of the picketing, and the purpose of the picketing was therefore not a proper object of concerted action. Or, as set forth in the Restatement of Torts, Section 794,

"An act by an employer which would be a crime or a violation of a legislative enactment or contrary to defined public policy is not a proper object of concerted action against him by workers."

There is in any event no suggestion in the opinions of the state trial court or of the Pennsylvania Supreme Court that there was any application of state sanctions to violations of the Labor Management Relations Act. We simply refer to the discussion of applicable public policy enunciated by the Pennsylvania State Labor Relations Act under Point IV of BRIEF FOR PETITIONERS. The Pennsylvania Labor Anti-lajunction Act to which respondents point was definitely not the source of the state court's authority. As set forth in the very case of ALLIANCE AUTO SERVICE, INC. v. COHEN, 341 Pa. 283, which respondents cite for the proposition that that act deals only with the

remedy of injunction, the Supreme Court of Pennsylvania stated (at page 288) that:

"... the Labor Anti-Injunction Act does not declare the act as to which it prohibits the issuing of an injunction to be either legal or illegal, but merely denies the particular remedy of injunction in certain cases and restricts it in others * * *"

The 1939 amendments to that Pennsylvania act, which respondents quote in part, simply removed a barrier to that particular form of remedy, injunctive relief, for a long-continuing and never repealed common law cause of action in tort. The Pennsylvania Supreme Court wholly agreed (R. 232) with the relevant controlling statement of the trial court (R. 197, footnote 9) that

"Section 4 of the Pennsylvania Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, as amended by the Act of June 9, 1939, P. L. 302 (43 PS 206d) provides that the prohibition against injunction shall not apply in any case."

(b) Where a majority of the employes have not joined a labor organization, or where two or more labor organizations are competing for membership of the employes, and any labor organization or any of its officers, agents, representatives, employes, or members engages in a course of conduct intended or calculated to coerce an employer to compel or require his employes to prefer or become members of or otherwise join any labor organization."

Plainly, then, respondents Point I is unsound and on the contrary the state trial court vindicated a private right within the plain and unambiguous meaning of FEDERAL TRADE COMMISSION v. KLESNER, 280 U.S. 19, AMAL-GAMATED UTILITY WORKERS v. CONSOLIDATED EDISON CO., 309 U.S. 261, and NATIONAL LICORICE CO. v. NATIONAL LABOR RELATIONS BOARD, 309 U.S. 350, over which the National Labor Relations Board had been delegated no jurisdiction with the result that the Labor Management Relations Act did not supersede such civil liability and the jurisdiction of state courts to vindicate such private rights under state law.

RESPONDENTS' POINT III AS TO LEGISLATIVE HISTORY

Strikingly enough most of the material marshalled in petitioners' Point I is apparently conceded, and is not even discussed by the tactical retreat in good order in respondents' Point III calling out that petitioners' purported analysis of the federal act and its legislative history is unsupportable. Respondents say things in this connection that betray how far they have withdrawn from the position occupied and fortified by petitioners. Respondents' exceedingly able counsel stays away from the congressional debates (except for conspicuously copious citations to the arguments against private injunctions in the federal courts, already documented and discussed at pages 32 to 36 of BRIEF FOR PETITIONERS), keeps away from the quite significant Conference Committee Report and presents no analysis of the language of the Labor Management Relations Act itself in Section 10(a). Noting this silent but eloquent tribute to their analysis in Point I of the Labor Management Relations Act and its legislative history, petitioners reply to the points discussed seriatim in the ten typewritten pages comprising respondents' Point III.

(1) Referring only to the Senate debates, and not to petitioners' analysis of Section 10(a) or the Conference Committee Report, respondents notice that some of the quotations in petitioners' Point I-A from that Senate debate are found in a context dealing with violence and mass picketing. But that context was the handiwork of the opposition and not of the overwhelming majority in the

Senate actually responsible for the equalizing amendments adding federal outlawry of unfair practices by labor organizations. It was the opposition that argued that this was an imposition of a double liability, and it was the opposition that took as its strongest illustration such matters of violence because they were unquestionably a violation of the state laws in every state. Of couse, in answering this loyal opposition on its own ground there are statements in the debates favoring two remedies even in those cases of violence and pleading for federal outlawry even of such universally unjustifiable conduct for the very purpose of encouraging local law enforcement and police action. The Supreme Court may well be encouraged to take a firm stand by the concession of this distinguished labor lawyer representing respondents that:

'Congress, in prescribing such Union conduct made it clear that such local police regulations remained unimpaired * * *"

The Senate majority, however, by no means limited their arguments to demolishing this stronghold of violence, illegal in every state, that the opposition had careefully chosen as the one point from which they could make their most effective attack on the equalizing amendments. Some of the very pertinent Senate debate going far beyond elementary cases of violence is referred to in BRIEF FOR PETITIONERS at pages 29 to 30, 32, and 122 to 126. Senator Taft referred to a specific case of coercion by threat of strike and to a specific case of attempted organizing from the top by picketing and Senators Ellender and Ball referred particularly to economic coercion by the Teamsters in California and Oklahome cases. Even Senator Murse. to whom the opposition are fond of resorting for authority, said of Teamster picketing of an establishment in an effort to increase the Teamster membership (BRIEF FOR PETI-TIONERS, page 31) that:

"If such activity constitutes a violation of State law, as it apparently did in the case cited, there seems to be no occasion for adopting the amendment, and thus requiring the N.L.R.B. to correct the same abuse. Congress nevertheless empowered the National Labor Relations Board to correct the same abuse by way of a public remedy in addition to and not in lieu of the absolutely necessary continuing remedies before state courts. The pur-pose was to make sure that there was some remedy and by no means to displace existing effective remedies. The Senate debates, then, cannot be ignored on respondents' undocumented say so, which is not so, that they were limited to matters of violence and local police regulations. The Senate recognitive court remedies in any case covered by the equalizing amendments. There was no reason in the world, the debates make clear, and they bear careful reading and rereading, why there should not be two remedies, remedies before the state courts as well as before the National Labor Relations Board with its obvious limits for effective action. The Conference Agreement reflected and expressed this intention of Congress. Section 10(a) likevice recognized the continued existence of state court jurisdiction of any other means of adjustment or prevention ar Congress expressly stated

(2) Respondents' second contention in this connection dwells primarily upon the National Labor Relations Act of 1935 and thereupon contends that:

"No changes which are relevant here were made by

the 1947 amendments."

The assumed premise as to the National Labor Relations Act of 1935 excluding labor injunctions and state court jurisdiction does not have any foundation either in the language of that statute (patterned after the Federal Trade Commission Act) simply empowering the National Labor Relations Board to prevent specified unfair labor practices

or in the congressional history. The congressional history includes the pertinent report of the Senate Committee of which Senator Walsh was chairman recognizing the adequacy and continuance of state labor injunctions in industrial disputes throughout the courry. (BRIEF FOR PETITIONERS, page 54, also page 49 for the following). The congressional history also includes the express statement by Senator Walsh that

"The courts will have in the future all the jurisdiction they have ever had in relation to all the differences which arise between employers and employees. * * *"

Senator Wagner likewise recognized the continued availability of injunctions issued by the thousands by courts all over the country.

The burden is therefore not upon the petitioners but upon the respondents to show that a change was made by the Labor Management Relations Act, otherwise state court jurisdiction continues. Oddly enough, as if anticipating the collapse of their own premise and assumption as to the 1935 legislation, respondents suggest or rather hint that the proviso in Section 10 (a) somehow accomthat revolution. That provise, clarifying the power of the National Labor Relations Board, within the scope of its own limited delegated authority, to cade or concede state labor relations board jurisdiction on an industry-wide basis by agreement has been discussed, adequately we trust, in Section I-C, pages 40 to 47, of BRIEF) FOR PETITIONERS. Respondents make a serious mistake, not borns out by the Congressional Record, when they rely on the supposition that in 1947 the question of federal and state authority in this fild was fully debated and every aspect of the problem was considered! By way of understatement we would ask that respondents produce the citations to any such debate. To the best of our

konwledge the proviso to Section 10 (a) providing for cession of jurisdiction to state labor relations boards was reported out favorably, with the approval of the minority members also, by the Senate Committee, ten days after the BETHLEHEM decision and was not debated on the floor of the Senate. The Conference Committee Report (BRIEF FOR PETITIONERS, pages 26 and 27) amply corroborates the intention of Congress, in using the language that it did use in Section 10 (a) in 1947, to continue state court jurisdiction under state law.

(3) General argument always gives counsel a lot of leeway and so respondents next argue a very general preemption intention and skip all over the Labor Management Relations Act in an effort to distill an amazing thesis that Congress took great care in each and every instance where it intended state action to spell it out in precise terms. On the contrary, as indicated by the taking of testimony as to specific abuses, by Senator Taft in his initial major speech, and at various points in the debates and committee report, Congress was intent on providing some remedy, to the extent that a federal or uniform rema edy seemed practical, and politic, for specfic labor union abuses that had been called to its attention. Its language is not understood as it was intended if read through the classes of the maximum expressio unius. On the contrary. Congress left the fleece of verbiage expressing its intention where the longest thorns of specific abuses happened to impinge upon its sensibilities. That is our distinct impression from a laborious reading and rereading of all the debates, reports and testimony and all the provisions in the Labor Management Relations Act. We believe that the members of the court, if they can make the time to jump into that bramble bush several times, will see the same thing. Petro, in Participation by the States in the Enforcement and Development of National Labor

Policy, 5th Annual Conference on Labor, New York University (1952), pages 66to 68 and particularly at the end of footnote 145, comes to the same conclusion that

"... the rest of the statute, tends to suggest that Congress was intent, not upon precluding state law generally, but only such state law as enlarged tradeunion immunities to legal process."

Respondents point to Section 14 (b) in effect stating that the state may go beyond the Labor Management Relations Act in restraining the institution of compulsory unionism. As pointed out by Petro, supra, at pages 67 and 68, every one knows that the Eightieth Congress was particularly concerned with the subject of compulsory unionism; that potent forces were at work to outlaw the institution in all its forms; and that very much alive at the time was the quesion whether the National Labor Relations Act of 1935 had, by accepting all forms of compulsory unionism, precluded the states from outlawing any form. There was a proliferation of regulation heightening the probability of conflict between state and federal law on the same general subject matter, and in the case of conflict, which did thereafter occur, state law would have had to bow, unless Congress had expressly delegated authority to the states, as it did in Section 14 (b). As Petro, supra, at pages 67 and 68, states:

Thus the deliberate, express delegation of power to the states may be entirely explained by the special circumstances surrounding the grant: Strongly opposed to all forms of compulsory unionism but unwilling itself to reject the institution completely. Congress virtually encouraged the states to go all the way and at the same time precluded all doubt of the validity of additional state sanctions. If the doubts concerning the validity of further state action were not alive—as they were not in connection with all the

other subjects presently under discussion—and if the Congress were not so specifically aroused on the cubject of compulsory unionism, the probability is that Section 14(b) would never have been written * * Algoria (336 U.S. 301) * * * rather clearly weakens the argument that the section operates somehow to preclude all state regulation which goes beyond any of the other features of tipe Act."

Respondents also refer to Section 303(b) which permits damage actions "in any " " " court having jurisdiction of the parties" against the unlawful strikes and boycotts defined in Section 8(b) (4) (A) of the Labor Management Relations Act. As stated by Petro, supra, at page 66 in the first paragraph of Note 145.

The specific grant of jurisdiction shows only that Congress was intent upon eliminating such strikes and boycotts from the industrial scene. In many states, the kinds of strikes and boycotts in 8(b) (4) (A) are not unlawful. Naturally, the courts in those states would accordingly afford no relief, except for the power granted by 303(b)."

Any such search, throughout the act, for some general congressional intention should certainly not overlook, as respondents somehow have failed to see, Section 14(a). As explained in Senate Report No. 105 at page 28, Legislative History of the Labor Management Relations Act, page 434 (the Conference Agreement later adopting the provisions of this Senate amendment).

"This is a new section which makes it clear that the amendments to the act do not prohibit supervisors from joining unions, but that it is contrary to national policy for other Federal or State agencies to compel employers who are subject to the National Board to treat supervisors as employees for the purpose of collective bargaining or organizational activiThis provision strongly suggests that when Congress intended to exclude state action, and was intent upon declaring a uniform national policy which the states should not change, it said so, and knew how to say so. As moderately summed up by Petro in Participation by the States in the Epiforcement and Development of National Labor Policy, New York University Fifth Annual Conference on Dabor (1952), page 67, and of footnote 145,

On the whole it would appear that 14 (a), like the rest of the statute, tends to suggest that Congress was intent, not upon precluding state law generally, but only such state law as enlarged trade-union immuni-

ties to legal process.

Respondents, in addition to clutching at various straws in other sections of the Act, refer to the even more remote House Report No. 245, 80th Cong. Ist Sers., page 44, Lexislative History, etc., 335, which concerned the very different House Bill that expressly made "exclusive" a much broader and more comprehensive piece of proposed legislation and at the same time wanted to make sure that numerous state right-of-work statutes or constitutional amendments could not be questioned. A more relevant statement of Congressional intention is found in the subsequent House Conference Report No. 510 at page 60, Legislative History, etc., page 564, stating that

"It was never the intention of the National Labor Relations Act, as is disclosed by the legislative history of that act, to preempt the field in this regard so as to deprive the States of their powers to prevent compulsory unionism." "To make certain that there should be no question about this, section 13 was included in the House bill. The conference agreement in section 14(b), contains a provision having the same effect." Without roaming all over the statute and through

superseded portions of committee reports, it may be conchides from the provides a Section III a) and the relevant legislative bistory that it was never the invention of the Labor Karasgement Reinvelle Act to present the Sald of state court jurisdiction to visible his private rights success state laws everycessed by retain activity which the 20th Congress of a so threat to see term offer that a society il equalizing emendments. Congress the tie-remot why there should not be two remodiles both lister-ette Nathoult Labor Relations Board with its hadred flowers and limited scope of effective action and before the indispensions state courts under state law. There was no broad processories by the struct projection, of state court jurisdiction which would only have as its chief practical result the creation of a vacuum which Congress aphorred The broad theory of preemption for which respondents here contend goes far heyond the decisions of the Supreme Court of the United States and the language and intention of a very practical, if not tough 80th Congress that was convinced by voluntinif not tough, 80th Congress that was convinced by volumin-ous testimony that there must be adequate recedies, and the more remedies the better, for certain abuses by some very powerful about unkness which it the session concerned Congress verey much.

(4) The one point where respondents come closest to the words of the statute is in their strange concentration of interest in explaining away the absence of a word no longer found in Section 10(a). Respondents completely miscoccive petitioners' position in misatating that

"They contend that the deletion of that word (exclusive) constituted a grant of authority for state court to act in this case."

The three typewritten pages devoted by respondents to a valiant effort to explain that Section 10 (a) should be read as though it had not deleted the word "exclusive" falls by the wayside while the good ground for profitable thinking

as to the deletion of the word "exclusive" is still to be found in Section I-D, pages 48 to 60 of BRIEF FOR PERI-TIONERS. When respondents refer to portions of the House Conference Report No. 519, 86th Cong., Let Som, page 52, Legislative Fistory, etc., page 556, for reasons why the word "exclusive" was deleted they somehow falter from sheer exhaustion without completion the entire paragraph of that Conference Report completely expressing the conpressional beten loss as quoted in full at pages 58 and 54. of PRIEF FOR PERITIENTEES. That paragraph does start out by stating two of the reasons for deleting the word "exclusive" Ed been emitted in the Senate assendment which had previded in Section 301 for suits against unions on collectife bargaining contracts il in Pacitical (1(4) fair descriptores of injunctions in fenceral mer upon presidentele la Nedecial de la Rédicia Barri. Estan 2011, processes marches de Carrier Incidit de there was no intention to practice state court jurisdiction over this life violation of collective descentate in the courts have since held. By white Congress deleted a proposed provision that stoketon of collective barraining agreements be an autist toket mesetter. Section 301, then, is far from 4 till and complete explanation to why the word terrotrates was deleted to thought, the matter of temporary injunctive relief upon position of the Board in federal court course by the full explanation in view of the tetraheart, the page later, in the same conference report, at page 37, Leonalities Ristory, etc., page 361, that

The power of the Bosed under this provision will not affect the availability to private persons of any other remedies they might have in respect to such activities."

The complete explanation then must be found by completing a reading of the full paragraph of the House Conference Report at page 52. That paragraph goes on to point out

that when the word "exclusive" found in the House Bill was deleted, the Senate substituted language providing that the Board's power shall not be affected by other means of adjustment or prevention. And then that paragraph of the House Conference Report goes on to give the reason for that substituted language. As a matter of logic, the reason for substituting the new language is quite as much an additional reason for deletion of the old language and of the word "exclusive." Thus, on a complete reading of this paragraph of the House Conference Report, we find that the word "exclusive" was deleted for the third and perhaps more important reason (and the language recognizing other means of adjustment or prevention substituted for the reason) that, as that pertinent paragraph of the House Conference Report equaludes,

"By retaining the language which provides the Board's powers under section 10 shall not be affected by other means of adjustment, the conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies."

For the foregoing reasons, we respectfully submit to the court, and suggest in all kindness to assless cosmed for respondents, that respondents' Point II must yield (whatever the merits of this hasty reply) before the carefully-supported, documented and reasoned analysis of section 10(a) of the Labor Management Bolations Act as lots legislative history in BRIEF FOR PETITIONERS, wint I. That point is in itself a sufficient reason for reversal of the Pennsylvania Supreme: Court and for sustaining of the state court jurisdiction to which Congress consented.

RESPONDENTS' POINT IV POTENTIALS OF CONFLICT

Again, respondents appear to concede most of petitioners' argument. They doubt however, the supecity of the National Labor Relations Board to police any abuses by state courts, should such occur. They contend that:

The Board is stroply not general, in management or

otherwise, to set as a supervising agent over the country."

conducts are apparently not aware that they are therecounting thems gives on their own peterd. If the Board

Bespondents are apparently not aware that they are thereby holding themselver on their own peters. If the Board is not in positive to supervise the work when actually being deals by responsible state courts how can the Board go much, much further said do the work itself? It is that very limitation of effective federal action which so impressed Congress that Congress was insistent upon the continuation of state court remedies for labor union abuses that the 50th Congress in its wisdom falt must be remedied. Petitioners accordingly suggested, on their reading of the Actuard the legislative history, that the Board, although it could not possibly do the work itself, should be in position, after by providing its own parameters remedy in the public interest or by appropriate injunction proceedings in the federal court, to supervise the very necessary work of state courts.

Respondents are so concerned about the Incapacity of the National Labor Relations Board because, in delicate number, they level a serious charge on the basis of "superficial observation" that abuses are supposed to have occurred in "scores of recent decisions of state courts throughout the country in picketing cases * * * " Anyone who makes such a serious charge should be prepared to stand up and be counted, and to document the charges. Respondents are here taking issue, not so much with counsel for petitioners (BRIEF FOR PETITIONERS, pages 35)

and 94) as with the results of a careful congressional investigation of state labor injunctions. In referring to this congressional investigation, we first note that the 80th Congress, with the intention of which we are here concarned, felt no need even for such an investigation. The then Secretary of Labor, Schwellenbach, himself testified that in his rather broad experience he had met with no glaring cases such as had been previously collected by Frankfurter and Greene in their serious study of The Labor injunction. The 80th Congress did not therefore go be-yand the materials and testimony in the heavings before its responsible committees and instituted no investigation of state labor injunctions, but on the contrary in its Conference Report emphasized the maintenance of the status que; while there was no change in the Norvis-LaGuardia Act limiting federal court injunctions at the suit of private parties, there was likewise no change in the status quo in the states. The Conference Report expressly explained that the action of the 80th Congress in making available to the National Labor Relations Board preliminary injunctions in the federal courts did not affect the availability to private parties of any other remedies they might have with respect to union conduct. We respectively sent, not on personal windom, but on the windom of Congress and of careful scholars in this field as reflected in Senate Docu-ment 7, 82nd Cong. 1st Sess. entitled STATE COURT IN-NUNCTIONS, being the report of the subcommittee on labor management relations of the committee on labor and public welfure of the United States Senate as presented by Senator Murray on February 8 ,1951. That responsible study is not in accord with the heated charge of respondents, in the ardor of advocacy, that

"Rights guaranteed by Section 7 of the Act are being wholly ignored and vitiated every day."

forth in the staff report to the subcommittee on labor and labor-management relations of the committee on labor and public welfare of the United States Senate, 82nd Cong. 2nd Sess. (Government Printing Office, 1953), page 34 that:

"Self-restraint on the part of State courts is the most promising cure for the improper use of labor injunctions"

There is good reason for the position because as suggested

in that same staff report page 34.

"Our Federal system is based upon a distribution of authority which both insures equal treatment for those similarly situated throughout the Nation and -utilizes local government to the maximum. This promotes responsibility in local government. Local regulation is often more acceptable than intervention by the central Government."

We do not share the respondents' lack of confidence in state court judges, men who are the cream of the land and very responsible representatives and administrators of justice in their respective communities. When respondents attempt to bolster their charges against state court judges in general by suggesting that they are often "unacquainted with the intricate problems of construction of the Act" they miss the mark in this case of state court jurisdiction to vindicate private rights under state law with which state court judges are very well acquainted.

By way of contrast, what do respondents suggest that the National Labor Relations Board should or would have done in this case? The respondents make the very interesting revelation that the National Labor Relations "Board does not have the facilities to take action. In the instant case, its aid was informally sought by the Union when the case was being appealed to the State Supreme Court. We were told that the Board was simply unable to undertake the policing of the many such cases at the state level." If

the respondents were so sure that this was a matter for the Labor Relations Board, or that their fundamental rights were being impaired, why did not they institute proceedings before the National Labor Relations Board?

Dire consequences there would have been to petitioners and not the state trial court exercised jurisdiction to vindicate their private rights. The status quo was very properly preserved, although even then a temporary or preliminary injunction was issued only after ten long, long days, and answer by the Teamsters, and examination and cross examination of witnesses on both sides. In such a period of time a man's small business or means of livelihood can be utterly destroyed by the terrifying power of the Teamsters over the truck transportation which constitutes the life blood for petitioners' means of livelihood, as indeed of much of the economic life of this nation to an amazing extent. How has the union, of the powerful Teamsters, been hurt? This was not a case of strike breaking by injunction. This was a case of organizing from the top where the Teamsters were determined to add to their membership, even if they had to force the employer to do their own organizing for them, men who had not been sold on the Teamsters and did not choose to join the Teamsters. Should the serious question of state court jurisdiction here presented be resolved in accordance with the contentions of the Teamsters, they can immediately resume picketing. They have been at the job some fifteen years and have shown no harm to them, much less any harm comparable to that which would have been inflicted upon the petitioners had no injunction been granted, during the period of time that the several state courts wrestled resolutely with the very serious question which is now before the Supreme Court of the United States for ultimate resolution.

The desire of the Teamsters for freedom to exercise their terrific economic power, untrammeled by state laws

administered by state courts and without too much attention from a too busy National Labor Relations Board is understandable. The legislative considerations advanced by petitioners have this very year been brought to the attention of responsible committees of the 83rd Congress by representatives of the Teamsters as well as by representatives of a textile union whose unsuccessful southern organization campaign had on several occasions passed the bounds of applicable state law. Judgment on such matters is a matter for the Congress and if Congress is convinced that what the respondents and the Teamsters generally claim is so, no doubt Congress will take appropriate action. What that appropriate action should be is a matter for Congressional consideration. The staff report to the Senate subcommittee on labor and labor management relations, 82 Cong. 2d Sess. (Government Printing Office, Washington, 1953) entitled STATE LABOR INJUNC-TION AND FEDERAL LAW, has suggested that primary consideration might well be given to the following remedy:

The Congress should prescribe procedural rules such as those in the Norris-LaGuardia Act for State court injunction cases involving enterprises affecting intrastate commerce."

It should be sufficient for the Supreme Court of the United States to say that, while bills to limit state court jurisdiction in labor disputes affecting interstate commerce have been introduced, Congress has thus far not seen fit to prescribe and remedy, much less to abolish such jurisdiction, there being important countervailing considerations of policy for not throwing out the baby with the bath. Accordingly, the Supreme Court cannot affirm on the basis of the "observation" and charges set forth in Respondents' Point IV but, on the contrary should reverse for the reasons set forth in petitioners' Point III, if indeed the decision is not grounded on petitioners' logically prior contentions

or points I or II.

That is as much as petitioners have seen of BRIEF FOR THE RESPONDENTS and thus is the limit of this printed reply thereo.

B. BRIEF OF AMERICAN FEDERATION OF LABOR, AMICUS CURIAE, CONSIDERED

With the consent gladly given of petitioners, the American Federation of Labor has filed as amicus curiae a brief supporting the position of its powerful affiliate, the Teamsters. This brief, making many of the contentions likewise advanced by respondents; starts out with an initial proposition like the respondents' first point that petitioners asserted rights are public rather than private, (and petitioners reply as to that accordingly need not here be repeated), adds a second point contending for preemption even of private rights and then as a third point proceeds to propound an affrmative answer to the assumed "ultimate. question" whether Congress intended to exclude "state action" in a particular Seld in which Congress had power to legislate. Under this third point the A. F. of L. considers first part of the statutory language, then resorts to presumpion and rationales and finally calls attention to a small portion of the Legislative History concerned with congressional maintenance of the status quo under the Norris-LaGuardia Act restricting private injunctions in the federal courts. Petitioners accordingly reply, seriatim to the A. F. of L. points II, III-A, III-B, and Coand III-D in four corresponding steps.

A. F. OF L. POINT II, PRE-EMETION OF PRIVATE HIGHTS

In approaching this contention of the American Federation of Labor that Congress has regulated respecting

petitioners' rights, even if they are private rights, petitioners disclaim the concession which the A. F. of L., at page 3, would amazingly impute to them that if the state-granted rights they here seek to vindicate are public in nature, the state court had no jurisdiction. Any such assumption would tend to suggest that the American Federation of Labor has read Point II of petitioners' brief but has not read Point I. Whatever the nature of the rights, so long as they are state-granted rights, the state courts may vindicate them with the blessing and consent of Congress as pointed out in the discussion under Point I in BRIEF FOR PETITIONERS. It is also noted that at page 12 (see also page 15) the A. F. of L. recognizes that Congress has delegated to the National Labor Relaitons Board authority only to protect public rights and has not created a "private administrative agency" for the enforcement of private rights. With these preliminary observations, petitioners reply to PLANKINTON PACKING CO. v. WISCONSIN EMPLOY-MENT RELATION BOARD, 338 U.S. 953, by referring to the discussion in BRIEF FOR PETITIONERS, particularly at pages 8 8to 80 under Point III, a point reached only if petitioners' Points I and II are both decided adversely to petitioners. As to the ensuing reliance of amicu, curiae at page 8 on INTERNATIONAL UNION, etc. v. O'BRIEN, 339 U.S. 454, reference is made to the discussion in BRIEF FOR PETITIONERS at page 97 and footnote 20. Had amicus curiae completed the quotation from O'BRIEN by quoting also the very relevant immediately-preceding sentence, it would be quite apparent that the Supreme Court is very circumspect when it talks in terms of preemption or occupancy of the field and referred in that case only to occupancy of the limited field of "peaceful strikes for higher wages." To the extent that aminis curiae interweaves, at pages 7 and 8, some reference to AMALGAMATED, etc. v. WISCONSIN EMPLOYMENT RELATIONS BOARD, 340

U. S. 383, reference is made in reply to BRIEF FOR PE-. TTTIONERS, pages 98 and 99. Amicus curiae even clutch at a dictum in the case of CALIFORNIA v. ZOOK 336 U.S. 725, at 732, where the actual decision as suggested in BRIEF FOR PETITIONERS at page 83 strongly supports petitioners' position. The dictum was that Congress in the Taft-Hartley Act said that "state enforcement mechanisms" helpful to federal officials were excluded. The dictum thus has reference to "state enforcement mechanisms" and not to state court jurisdiction to adjudicate rights under state law. The dictum is by Mr. Justice Murphy, who had indicated his opinion of the helpfulness of stat elabor relations buards as enforcement mechanisms in BETHLE-HEM STEEL CO. V. NEW YORK STATE LABOR RELA-TIONS BOARD, 330 U.S. 767, 777, 783, where he joined with Mr. Justice Frankfurter and Mr. Justice Rutledge in a separate opinion pointing out that:

"Accordingly, the National Labor Relations Board, instead of viewing the attempt of State agencies to enforce the principles of collective bargaining as an encroachment upon national authority, regards the aid of the State agencies as an effective means of accomplishing a common end * * * In the submission by the Board before us, we have the most authoritative manifestation by national authority that State collaboration would be a blessing * * ""

It was precisely ten days after that separate opinion and that decision that the Senate introduced the provise to Section 10(a), to which this dictum of Mr. Justice Murphy may be construed to refer, to clarify the law and support that separate opinion so as to authorize the National Labor Relations Board, with certain limitations, to enter into compacts or agreements with state labor relations brards as helpful "state enforcement mechanisms" (see BRIEF FOR PETITIONERS, page 43 and related discussion under

Point I-C). We cannot see, therefore, that the dictum is to "directly in point" as amicus curiae fondly hopes with the blindness of love at first sight. In addition, in that ZOOK case a California statute prohibited the sale or arrangement of any transportation over the public highways of that state if the transporting carrier had no permit from the Interstate Commerce Commission, the Federal Motor Carrier Act had substantially the same provision, and the respondents, operating a travel bureau in Los Angeles were proscuted under the California statute and convicted; the Supreme Court of the United States upheld that conviction and, despite a strong plea as to double liability suggested that the state remedy constituted

"... aid of particular importance in view of the LC.C.'s small staff."

It follows from that decision that Pennsylvania's attempt to deal with a real harm to its residents had not been displaced by the Labor Management Relations Act since, paraphrasing the last two sentences in CALIFORNIA v. ZOOK, supra, the state may vindicate private rights under state law through its courts for the welfare of its inhabitants while the nation through the National Labor Relations Board may provide a remedy for the welfare of interstate commerce, and there is no conflict.

The remainder of Point II of amicus curiae was apparently written without paying any attention to BRIEF FOR PETITIONERS, particularly pages 72 and 73 or even the summary, particularly page 18. Might we be far wrong in drawing an inference that the distinguished but very busy counsel for amicus curiae has simply drawn from his prior brief in the case where this court later decided that the writ of certiarari had been improvidently granted, where Mr. Thatcher argued, we are assuming as he argues here, that a number of state court decisions hold that state courts have no jurisdiction to grant relief for alleged viola-

tions of the Taft-Hartley Act (at page 8). Whatever the merits of that position, that is not this case, where the state court explicitly (to the extent of holding hat the Labor Management Relations Act did not apply) acted under state law.

Other decision of the Supreme Court of the United States may be found more analogous on this second point of amicus curiae as to state court jurisdiction over private rights.

There comes to mind the upholding of state court jurisdiction in PENNSYLVANIA RAILROAD COMPANY v. PURITAN COAL MINING COMPANY, 237 U.S. 121, 35 S.Ct. 484, where the plaintiff coal company recovered a substantial verdict against a railroad which failed to supply sufficient cars, in violation both of state law and of the Interstate Commerce Act, for transportation of bituminous coal during a period of unusual demand incident to the 1902 anthracite coal strike. In affirming, this court, through Mr. Justice Joseph Lamar, recognized that Section 9 of the Interstate Commerce Act even provided for a private remedy before the Interstate Commerce Commission while giving the shipper an option to proceed in the federal courts, stated that (at page 486) so far as rights under the Interstate Commerce Act were concerned

"The express grant of the right of choice between those two remedies was the exclusion of any other remedy in the state court"

and yet affirmed and ruled (at page 488) that:

"In the present case the pleadings contained no reference to the commerce act. The damages grew solely out of the fact that the Puritan Company failed to receive the number of cars to which it was entitled." * * The Puritan Company was entitled to recover because of the fact that the carrier failed to comply with its common-law liability to furnish it

with a proper number of cars. What was a proper supply was a matter of fact."

From that decision it follows a fortiorari that where the National Labor Relations Board has been delegated no authority whatsoever over private rights, a state court likewise has jurisdiction to adjudicate a common law liability or to vindicate a private right under state law.

Our consideration of Point II of amicus curiae but strengthens the force and relevance of Point II in BRIEF FOR PETITIONERS that Congress has delegated to the National Labor Relations Board no authority to adjudicate private rights and has not entered this field where state court jurisdiction therefore continues.

POINT III-A OF A. F. OF L., THE STATUTORY LANGUAGE

For reply to this point of amicus curine, pages 12 to 21, petitioners refer to Point I of BRIEF FOR PETITION-ERS. Amicus curiae refers primarily to the proviso for ceding of jurisdiction to state labor relations boards discussed in detail in Point I-C of BRIEF FOR PETITIONERS and recognizes (at page 15) that it is the language of Section 10(a) which is determinative of the issues in this case, Amicus curiae also refers (at pages 16 and 17) to various other subdivisions of Section 10 more relevant to a case which that counsel had formerly argued from the viewpoint of state court jurisdiction to enforce the Labor Management Relations Act itself. Going on and on, amicus curiae at page 18 refers to Section 14(b) just as respondents had done and then inadvertently quotes from House Report No. 245, 80th Cong., 1st Sess., page 40, a statement at the time applicable to the then House bill which expressly made the power of the Board in terms "exclusive.". but the Senate and the Conference Committee Report changed that. Amicus curiae then spends a page on the

deletion of the word "exclusive" from Section 10(a), to which respondents had also adverted, as we have seen and closes by referring fully and fairly, albeit with some difference in emphasis, to the report of the Conference Committee (compare BZIEF FOR PETITIONERS, interalis, pages 26 and 27 and 56 and 57). In the light of Point III-A of amicus curine, petitioners' Point I is quite sound. Amicus curiae mentions (at page 15) and even italicizes the important second sentence of Section 10(a) but holds if off with a ten-foot pole and doesn't discuss it and immediately shifts to a discussion of language that does not now appear in Section 10(a). The statutory language, then, make clear, as does the Conference Agreement, that Congress has consented to the continuance or other mans of adjustmnt and of existing remedies before the courts.

POINTS III-B AND III-C OF A. F. OF L., PRESUMPTIONS AND POLICY

This amicus curine further contends in Point III-B that the fact that Congress has specified certain remedies presumes that it has excluded all others (a contention more pertienent to a case like GERRY of CALIFORNIA) and cities dissenting views in CALIFORNIA v. ZOOK, 336 U.S. 725, so that the majority opinion and decision of the court in that case may be rested upon as a sufficient reply Point I of BRIEF FOR PETUTE NERS further shows that Congress has consented to state court perisdiction. Point III-C of amicus curiae is a curious portrayal of the National Labor Relations Board "reduced to a state of idle impotency." That has not yet occurred, during the long period of time when state courts have generally exercised jurisdiction under state laws in such cases as this. How can this argument of amicus curiae be reconciled with arguments suggested by respondents that the board, even while state courts are exercising jurisdiction, is too busy to police local situations?

POINT III-D OF A. F. OF L. LEGISLATIVE HISTORY

At pages 25 to 32 this amicus curiae refers only to debates in connection with the Senate rejection of the House's provision for private injunctions in the federal courts. For reply reference is made to BRIEF FOR PE-TITIONERS, pages 32 to 34, also 35 and 36. Even in the quotations selected by amicus curiae, it is apparent that the argument was for maintaining the status quo, as to the federal courts alone under discussion by not opening up t'e Norris-LaGuardia Act. These distinguished senators were talking about what they were thinking about, the federal courts, and when the House vielded on this point it insisted upon an express stipulation in the Conference Report that the limiting of federal court injunctions to apprerogative of the Board would "not affect the availability to private persons of any other remedies they might have in respect to such activities."

C. BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE CONSIDERED

This refreshing bit of original thinking, submitted to us on schedule in a typewritten draft, has now arrived in printed form. Appendix B of this C. I. O. brief sets forth our argument before the Pennsylvania Supreme Court, which that court rejected after careful consideration, that Section B (b) (2) should be construed as recrowly as the facts in the five cases thereunder upon which Teamsters had relied to rtheir assertion that Section S (c) (2) applied. Indeed our oral argument before the Pennsylvania Supreme Court focused on that point, and this may ex-

plain some of the very apparent oversights, thus contributed to by cousel, of the Supreme Court of Pennsylvania very strong court that it is. The petition for re-argument did go further but was perhaps an inadequate substitute for oral argument before the Pennsylvania Supreme Court on the crucial issue now gresented to the Supreme Court of the United States for decision. At the same time this explains why we have leaned over backward, where the Supreme Court of Pennsylvania squarely decided against us, after full oral argument, on the scope of Section 6 (b) (2); we have therefore deliberately narrowed the issue, on the basis that Section 6 (b) (2) does apply, so as to strike at the jugular, as Holmes himself has advised should be done, on the remaining controlling issue.

The Supreme Court of the United States is of course not bound thereby, and has the final word as to whether or not Section 8 (b) (2) does apply as the Supreme Court of Pennsylvania held. If the Supreme Court of the United States should decide to follow the view, for which the C. I. O. here argues, that Section 8 (b) (2) does not apply (or as suggested by amicus curiae at page 14 applies only where the union insisted on the inclusion of a clause in a contract with an employer which would violate Section 8 (3)"), then the Supreme Court could very simply reverse the Pennsylvania Supreme Court on the basis of settled principles re-affirmed in INTERNATIONAL UNION, etc. v. WISCONSIN EMPLOYMENT RELATIONS BOARD, 336 U. S. 245. It is the C. I. O. and not petitioners suggesting that easy way out.

What the C. I. O. is really up to after a long build-up (with various points to which our disagreement sufficiently appears from BRIEF FOR PETITIONERS and prior phases of this reply brief) is to undermine INTERNATIONAL UNION, etc. v. WISCONSIN EMPLOYMENT RELATIONS BOARD, 336 U. S. 245, and to ask nothing

less than that (at page 18)

". . . this court should specifically overrule that

The startling suggestion of the C. I. O. (at pages 17 and 18) specifically stated in the language of amicus curine is that

We believe that if the decision of this Court in Automobile Workers v. Wisconsin E. R. B., 338 U. S. 245, be construed as establishing an area between the protected activities on the one hand and forbidden activities on the other, in which the states are free to apply their own labor relations policy, this Court

should specifically overrule that case."

There is nothing novel in the necessary recognition that there is an area of employee activity which is neither proscribed nor protected by the National Labor Relations Act or by the Labor Managemen Relations Act. In the matter of PERRY NORVELL COMPANY, 80 N. L. R. B., 225, 241, in 1948, the National Labor Relations Board took pains to point out that a great deal of confusion in the arguments of counsel, including General Counsel, in that case, stemmed from their failure to distinguish between unprotected activities of employees on the one hand and unfair labor practices by labor organizations on the other and clearly re-affirmed the proposition established by its own prior decisions, by decisions of the Supreme Court of the United States and by the Conference Committee Report explaining the Labor Management Relations Act that

"There is an area of employee activity, not precisely defined which, while not constituting unfair labor practices under Section 8 (b) of the Act, is nevertheless not protected by the Board when employees seek affirmative relief themselves under Section 8 (a). This doctrine was evolved by the courts and Board under the Wagner Act. Although some employee conduct previously denominated as 'unprotected' has been made an unfair labor practice when committed by a labor organization or its agents * * * the dootrine that some conduct by employees may be unprotected, although not amounting to unfair labor practices, has retained its full vigor under the Labor Management Relations Act, 1947."

This well-established principle and fact as to the terms of the Labor Management Relations Act was authoritatively and decisively re-affirmed, in 1949, in INTERNATIONAL UNION, etc. v. WISCONSIN EMPLOYMENT RELATIONS BOARD, 336 U. S. 245, 253-254, where this court speaking through Mr. Justice Jackson, in a complete and carefully-reasoned opinion, stated, inter alia, that:

"Congress made in the National Labor Relations Act no express delegation of power to the Board to permit or forbid this particular union conduct, from which an exclusion of state power could be implied."

"It seems to us clear that this case falls within the rule announced in ALLEN-BRADLEY (315 U. S. 740, 749) * * * because 'Congress has not made such employee and union conduct as is involved in this case subject to regulation by the federal Board."

That is sound doctrine, and there was no dissent as to the principle, all of the justices having joined in recognizing the rule in ALLEN-BRADLEY. The dissenting opinions were concerned with the application of the principle in that the dissenting justices viewed the particular activities there involved as protected activities. The C. I. O. in its amicus curiae brief here now advances its theory that there should have been a dissent also as to the application of the principle on the other side, in that the C. I. O. now has a theory that the conduct there involved was (by Sec-

tion 8 (b) (3) of the Labor Management Relations Act forbidden.

The decision, strengthened indeed by such dissents. stands. There is undeniably an area between the protected activities on the one hand and forbidden activities on the other. Congress wasn't dealing in the kind of logic now employed by the C. L.O. in drawing two hemispheres of protected activities and forbidden activities that covered the whole world of union activities. The only result of such impractical logical activities would be to exclude the states, the result for which the C. I. O. understandably hopes, but Congres wasn't interested in that. Congress was interested in enlarging the forbidden activities. Congress was also interested, understandably enough at the same time, in restricting the protected activities which were its inheritance in Section 7 of the National Labor Relations Act of 1935. It said in express words that there were limitations on the right to strike. It said in express words that there was a right to refrain from concerted activities. It is very plain from the language, history and purpose of the Labor Management Relations Act and the pertinent decisions that there is an important tertium quid of unprotected activities of employees beyond the scope of the specific unfair labor practices by labor organizations which Congress specified in Section 8 (b).

It necessarily follows (see also the authorities cited in BRIEF FOR PETITIONERS, page 62 and footnote 12), as re-affirmed in INTERNATIONAL UNION, etc. v. WISCONSIN EMPLOYMENT RELATIONS BOARD, 336 U. S. 245, that in the important area between the protected activities on the one hand and forbidden activities on the other over which the National Labor Relations Board has been delegated jurisdiction under the Labor Management Relations Act, the states are free to apply their own labor relations policy. Such conduct is govern-

able by the state or it is entirely ungoverned. In that area the state labor relations boards may act. In that area, a fortiorari, state courts may adjudicate private rights under state law.

After everything so well said by the opposing briefs of our formidable adversaries has been carefully considered, whether there was opportunity to mention it in the foregoing reply or not, we ask that, for one or more of the reasons stated in this REPLY and in BRIEF FOR PETITIONERS, the Supreme Court of the United States uphold state court jurisdiction under state law.

Respectfully submitted,

JAMES H. BOOSER, Of Cousel for Petitioners

LIBRARY SUPREME COURT, U.S.

OCT 16 1953

IN THE

Supreme Court of the United States

October Term, 1953 NO. 56

JOSEPH GARNER and A. JOSEPH GARNER, trading as CENTRAL STORAGE & TRANSFER COMPANY,

Petitioners

TEAMSTERS, CHAUFFEURS and HELPERS LOCAL UNION No. 776 (A.F.L.), ED LONG, President; ALLEN KLINE, Business Manager, et al.

Brief For Respondents

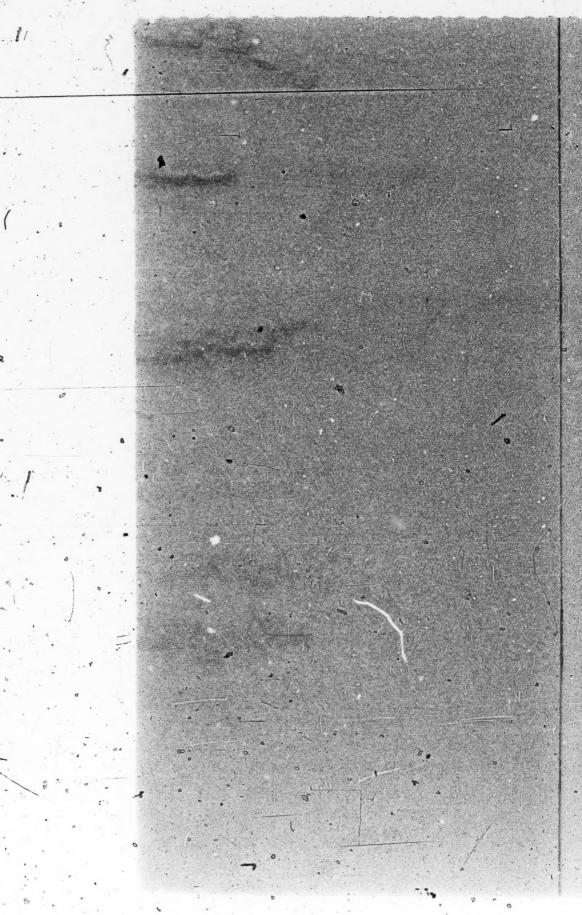
On Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania

On the Brief EDWARD DAVIS,

SIDNEY G. HANDLER, Attorneys for Respondents.

MORRIS P. GLUSHIEN

Keystone Building Harrisburg, Pa.



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The pertition providence of the Pennsylvania Labor contracts Act, approved Jane 1, 1987, P. L. 1108, No. 204, d. 178 201 i et mg. the amendments thereto approved Jane 2, 1995, P. L. 200, Ar PR 211.6(2)(a) to (c), and the amendments thereto approved July 7, 1947, P. L. 1445, 45 PR 311.8 (2) (d) (e), are set forth in the Appendix, infra, pp. 57-51.

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Desperation. The conterns, Characterian & Biologica, Local Creat, St. (20), the discrete voters at the st. Thirds. In a labor organization, sky promisers of which are superced as track through and help for it, the same traight tracking industry in which Content (4 the sugarged. (Pindings of Fact Nos. 6 and 7, 2-1725)

The Union has for some period of time attempted to organize Patitioners' employees. For a period of at least the past ten years no attempt has been made by the Union to conflict the Employer for organizational purposes. (Findings of Pact No. 10, 26, R-173a, 176a, 177a).

About ton years prior to this section, Kline, the Union representative, testified (and was uncontradicted) that Garner refused him the right to talk to the employees and to meet with them at the terminal, and in fact, show he addressed such request to the employer, was ordered of the property. (R-140s, 180s) However, four employees of Petitioner

Against this backdrop of the Ainterior relationship the parties, the Union, during the latter part of May, 134 indebigot the organisation of truck drivers and holps employed by a minibor of drayage from in Murdahous in childrang visitioners. At that that the Union held collective burgelining contracts with a number of motor freight carriers in the arca and such contracts, programme to the policy of the Union, provided with reference to union manhability at such memberably was required only thirty days after aployment, like that were prepared to a conditional of the Richard Colleges of unton-thisp direction conducted by that agency, (Finding of Pact No. 251 Rolyka

reparatory to its organizational activities, the Union to June 1, 1949, sent a letter to a number of Teacaster Local

joined and still continue to be Union members. They do see attend meetings are do they ever come to the Paion Hall. (R-1844) Edisonating are do they ever come to the Paion Hall. (R-1844) Edisonated the variables of the carifoldina which obtained among the amployees of Particone with regard to attain membership (R-1944) but the trial evert poleses to admit the results of the investigation in syddenes in this case. (R-1844, 1934, 1934)

Harponders official to prove that this investigation disclosed that the employee striped Kline, the Union representative, that they did not what to talk as I'v seen talking to him because it would asserted that estationarily wife their employee because the employee was hartly attended to the estationarily wife their employees because the employee was hartly after a till light of Joseph Garner's testimony that he "weeden't have any object of a lie employees joining a nation. (R-1844) I'v also correlevanted Kh. W. testimony that he contacted Politionary engages at other terminal and on the exect and they would not disclose their names or talk to bine. (R-188a, 189a) Had the offer of proof been allowed and and red dible evidence been admitted permant to the offer. Findings of Fact No. 11 (R-178a) to the effect that Petitionare have not directly or indirectly put pressure on its employees to refress from joinizer a labor organization or to "refress from engaging in concerted activities for the purposes of collective bargarning, gaging in concerted activities for the purposes of collective bargaining, and Finding of Fact No. 13 (R-173a) to the effect that Petitioners did not object to its employees joining the Union might not possibly have been entered in this case. (Italics supplied)

Unions in the adjoining communities in which is advised these other affiliates that:

"This Local Union is engaging in an organizing compaten the object of which is to enroll among our membership the truckdrivers, helpers or warehousemen employed by a number of local dray and freight carriers such as " * Central Storage and Transfer, * * *

"Our program is limited to an appeal to the employees of these and similar companies to join our Local Union. It is our intention to advertise this appeal by the use of pickets at the places of employment involved.

—"In accordance with our usual practice we are bringing this to your attention. Since this will not create the usual strike situation, we are particularly anxious that you will not misunderstand one extent, object and purpose of our program and activities. It is limited strictly to that described in this letter.

"" " we are, in view of the program limiting our activities to an appeal to the employees at their place of employment, and accordingly must request that your Local Union refrais from any activity in connection with these companies, and their employees in order that no one may misconstrue our objects and purposes." (Finding of Fact No. 15, R-173a, 174a.)

No other communication took place between Respondent Union and the other Teamster Local Unions.

On June 7, 1949, two persons," neither of whom were employees of Petitioners, commenced picketing at the entrance to Petitioners' terminal carrying signs bearing the legend that:

The andisputed testimony established that the pickets were members of the Union. (R. 75a).

"Local 776 Teamsters Union (A.F.L.) wants Employees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions." (Finding of Fact No. 18, B-174a).

During the morning of the first day of the paketing Joseph Garner inquired of the Union representative as to the reason for the picketing and was advised that "This is a means of advertising " " " we are simply doing this to try to sell the men to join the Union." (Finding of Fact No. 19, R-175a).

The trial court found as a fact that the Union did not picket or in any other way attempt to cource neutral employers from transporting freight to and from Central's terminal (Finding of Fact No. 28, R-177a), nor did it induce or encourage concerted action by the employees of neutral employers to refuse to transport freight to and from Petitioners' terminal. (Finding of Fact No. 29, R-1625).

The Union at no time threatened, either directly or indirectly, to picket Petitioners' terminal if it did not compel its non-union employees to join the Union nor did the Union make demand upon Petitioners that it discharge these employees and hire union members in their place. (Finding of Fact No. 27, R-177a).

The picketing, which continued for the brief period of nine days, was at all times conducted in an orderly and penceful manner. (Finding of Fact No. 17, R-174a).

The Union did not request recognition as the bargaining agent for Petitioners' employees and no question of representation was raised. (Finding of Facts Nos. 13, 26, R-176a, 177a, 173a).

On June 9, 1949, Petitioners sought an injunction to restrain the picketing in the Court of Common Pleas of Dauphin County, Pennsylvania. * The trial court, after preliminary hearing, and on June 17, 1949, entered a preliminary injunction restraining the Union, without qualification or limitation, from all picketing (R-la, 6a, 102a, 193a). No money damages was awarded in this case.

The Petitioners sought the injunction on the sole ground that the Union had "engaged in a course of conduct intended and calculated to coerce the plaintiff to compel or otherwise require its employees to become members of or otherwise join the said union" (Complaint, Paragraph 10, R-5a, 6a). This allegation was an essential statutory condition to the authority of the court to enter an injunction (Labor Anti-Injunction Act, June 2, 1937, P.L. 1198, Section 4 (b) and (c), 43 PS 206d). Appendix B, infra, pp. 66-67.

The lower court made a conclusionary finding to that effect in support of the order. (R-192a)

Respondent filed exceptions to this order which remained undisposed of for six months, and were then dismissed at the Respondents' request (R-110a).

The master did not receive its final hearing until more than a year after the entry of the temporary injunction, and then only after Respondents had filed a formal motion requesting the same (R-110a, 111a). Even then, the trial court, after a brief hearing of less than an hour, granted Petitioners' request for a further continuance and Respondents were compelled to file a formal petition to conclude the final hearings (R-135a, 136a).

* Petitioners offered no witnesses or testimony at the final hearing. Counsel for Petitioners, asked leave to have the testimony transcribed

Petitioners, on June 10, 1949, also filed charges with the Pennsylvania State Labor Relations Board against Respondent Union, alleging substantially the same matters as were set forth in the Bill of Complaint. This action was not pursued by Petitioners. The State Board unlike the National Board does not investigate and litigate charges. Such action is the responsibility of the charging party. (R-37s, 51s)

Finally, and almost three years after the preliminary injunction was entered, the lower court entered its final decree barring the Union from all picketing for any purpose whatsoever (R-2a, 3a, 228a).

Respondents promptly filed and perfected their appeal in the Supreme Court of Pennsylvania, which court, after hearing argument, entered their opinion on Tebruary 13. 1953. The Supreme Court of Pennsylvania (speaking through Mr. Chief Justice Stern and with Mr. Justice Bell dissenting) hithough taking cognizance of the Respondent Union's contention, that the evidence established that they were engaged in a constitutionally protected activity by stating that "If such was indeed the fact the picketing was constitutionally protected and should not have been enjoined" (R-231) determined that since "plaintiff employers were engaged in interstate commerce, and the charge made by them was that the defendant Union was engaged in an activity which was unlawful under the law of the State but which also constituted an unfair labor practice under the provisions of the Labor Management Relations Act, and since that act provides an adequate and complete administrative remedy to prevent the continuance of such activity if the charge be substantiated, the Court of Common Pleas of Dauphin County had no jurisdiction to issue an injunction in this case * * * (R-238)

Thus, almost four years after the brief spisode of picketing presented by this case was completely restrained, it was determined that the state court had no authority over the matters here involved.

for a future hearing in the case in order that they would "have a chance to study the witness' testiming as to his interpretation of the By-Laws and what the policies of his organization are." (R-131a) The trial court granted this request over the objection of Union counsel. (R-134a) Petitioners' counsel had obtained a copy of the By-Laws at the hearing on June 13, 1949. (R-95a, 131a)

ARGUMENT

SUMMARY OF ARGUMENT

A state court has no authority to issue an injunction against Union activities on grounds which are the same as those denominated as unfair labor practices under Section S (b) (2) of the Labor-Management Relations Act, 1947.

This proposition is controlling in the instant case because the state court's authority to issue the injunction was regulated by a state statute which, insofar as is relevant to this matter, restricted the power of the court to issue injunctions to case, where the union activity constituted an unfair labor practice under the Federal statute.

Thus, where as here, Petitioners invoked the equity power of the state court by a complaint based on a conclusionary allegation consisting of the same words as the state statute prescribed for the state court's injunctive power, and the language of the state statute has been construed by the highest court of the state to mean and relate to the "identical grievance" covered by Section 8 (b) (2) of the Pederal statute, it is clear that the state court is without power to act in the matter. This conclusion becomes more inescapable upon closer exact mation of the state statute which demonstrates that the only power the state court could possibly have in the circumstances would of necessity be derived from and is dependent upon the Federal Act.

Petitioners cannot escape the consequences of the rule of preemption by their contention that their resort to the state courts was to obtain redress against an encroachment upon a so-called "private" right. No "private" right is involved in this particular case, and, even if Petitioners have some kind of a "private" right with respect to the Union's activity, no such right has been pleaded and is not cognisable in these proceedings. The only rights of Petitioners which may be involved here are those "public" rights created by Congress in the Pederal statute which was enacted in the "public" interest. This is reinforced by the further fact that Petitioners' admission to the state courts was dependent upon a state statute enacted pursuant to the public policy of the state and their eligibility for relief depended solely on rights created by the Federal Act. The remedy prescribed by the Federal Act in vindication of the rights claimed by Petitioners and protected by the Federal Act has been examined by the highest court of the state and found to be comprehensive, complete and adequate.

In any event, Petitioners were not entitled to an injunction in a state court to centrain the Union's activity in this case. The undisputed evidence in this case clearly establishes that the Union's activity consisted solely of peaceful picketing for organizational purposes. Such is "prorected" activity under Section 7 of the Federal Act, the interference with which by Petitioners, by the application to the state court for its restraint, was an unfair labor practice under Section 8(a) (1) of the Act. However, the lack of authority of the state court in this case is not dependent upon a judicial determination in these proceedings that the Union was engaged in "protected" activity but flows from the possible presence of such protected rights and the correlative prohibitions which are within the exclusive province of the National Board to investigate and decide. Purthermore, even were the Board to decide that the Union's activity was not protected within the purview of Section 7, it was nevertheless free from state regulation because

Congress considered a proposal for the regulation of such activity and rejected it.

Whether this Court considers this case solely on the complaint, as the Supreme Posse of Pennsylvania, or upon the undisputed evidence, the absence of state authority is equally clear. The complaint shows on its face that Petitioners sought an injunction on a particular matter for Talich! Congress Las provided & specific regulation. Unia, the state conters authority is qualted mader the principles enunciated by this Court in Hill e Floride, 325 U. S. 538; Plantinton Packing Co. T. Wisconsin Board, 388 U. S. 983; Amalgemeted Association v. Wiscousin Board, 340 U. B. 388; and, International Union v. O'Brien, 330 U. S. 464. The evidence establishes that this case relates exclusively to the particular matters and relationships which Congress sutherized the National Board to pass upon and regulate. Consequently, the state courts authority is ounted under the principles councisted in Bethletten Steel Co. v. N. S. S. L. (c. 1), 83/ C. S. 787 and Intercent Telephone Corp. v. W. i. consin Board, 336 U. S. 18. Furthermore, since Congress considered a proposal for the regulation of the particular matters which are present here and rejected it, the state cannot act. Amalganiated Association p. Wisconsin Board, supre, and International Union v. O'Bries, supra.

The authorities cited by Petitioners in support of their position are inapplicable to the circumstances of the Instant case. This Court has limited state authority over Union activities in the field of labor relations to the regulation of "conduct" as distinguished from "purpose" or fobject," the traditional local police measures which are a necessary part of the law enforcement mechanism of our society irrespective and independent of the field of labor relations, and to areas delegated or permitted to the states by explicit Congressional authority United Auto Workers v. Wisconsin

Board, 886 U. S. 245; Allon Brudley Local c. Wisconda Board, 216 U. S. 740; Alponia Rigicocal and Veneer Co. c. Wisconda Board, 236 U. S. 360. No such altriation is presealed by the case here on review.

Nor does the legislative bistory of the Pederal Act provide support for Peritioners' position. All accurate and canplets'expansible of the Congressional action on the second
and the pattern of regulation empodied in the Act charts
are think that the procedures provided for Accrete the both
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translated in the process section. Farther more, Section 18 (a) Involved to the present ending Privile more thereon in (a)

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The instant case dramatically illustrates the chaos that would be wrought upon the national policy as expressed by Congress in the Labor-Management Relations Act, 1947, if

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The policies of the Common will of Pennsylvinia, the time to the contract of the common will be a first that the common will be a first that the common will be common to the common with the common to the common will be common to the common with the common to the common will be common to the common with the common will be common to the common with the common will be common to the common with the common will be common with the commo

¹ No charge however was pour find by Politicours with the Rational Labor Relations Board and at the matter was nover proposed by that Board.

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¹ See Appendix A, pp. 17-41 inc., setting forth all relevant portions of this statute discussed.

1 See Appendix B, pp. 69-71 inc., setting forth all relevant portions

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ACCUMENTATION OF THE PROPERTY OF THE PROPERTY

orders of the force of the first Court of lease in marchine in the transfer of the first Court of the counterest the interest of the counter of the counter

In the instant case, Chief Justion Storm stated: Thus it will be seen that the Act of Congress pechibits the same softway on the part of a labor organization in this respect as done the Poungregals Labor Relations Act, the only differences being that the Federal act would stamp this picketing as an unfair labor practice, whereas the State act does not so list it but our courts have declared it unlawful because aimed to occurs the employer into committing what the Act does declare to be an unfair labor practice on his part. R-389.

Parallel Retailement dense vond rognise petitions de l'activions de l'ac A Series of all is town in the A spot state one floor to excellent and other sections and of 1947. The Court of Chicago State Town State of the Court of the former lee's visibilit it up (25, me) of Caccion, 5(1) (2) of the Frederick

and accept the proposition that they brough their claim for opalishing which speed up allegation which by its forms constituted a Volumes of Section 8(b) (2) of the Pobural nine de l'Unio de prende Const of Paparellenia (construct du 1808 de 1816 (ciertae person Partitonare constitución de etare istatelle (finden prike) Petitionera sought cellis) as dealing (1714 "the Silverilea) grisyrneed (18-206) (rhigh Con-

O'The Supreme Court of Pennsylvania also determined the extent to which the legislatively declared policies in the field of labor relations shaped to expected by the Pennsylvania Labor Rolations Board to the marallel and intro-related area sovered by the Pennsylvania Labor Raistique Act, expend In the case of Pennsylvania Labor Raistique Act, expend In the case of Pennsylvania Labor Raistique Act, expend In the case of Pennsylvania Labor Raistique Act, expend In the case of Pennsylvania Labor Raistique vos in or affected interactive ocumpence, the court held that three the employer's allocal until taken resocial was probabled by the factor statute "the Busis Board was without jurisdiction to not " " (R-100).

The allocation in Pennsyraph 10 of the coordinate was the time qual pour of the state court include than

non of the state court's jurisdiction.

^{*}See Protects 4 above. The Supreme Court of Pennsylvania also constuded by repeating: "* * and the charge made by them was that the defendant Union was engaged in an activity which was unlawful under the law of the State but also constituted an unfair labor practice. under the provisions of the Labor Management Relations Act (R-238).

green regulated in Section 8(b) (2); in other words, the nime gelevance which Congress processed in the public interest. This determination by the State Court as to the "Mantiles!" quality of the gelevance with that which has its source in the Federal statute is a blading decision as to the nature of the rights dualt with in the state statute. Sense of the Lapers Union, 801 U.S. 408; Hotel & Restourant Sensitores at Wiscourte Board, 315 U.S. 437.

Furthermore, Petitioners, throughout their lengthy brief, fall to no doubt because they cannot—support their naked assertion that the rights which they claim are 'private' in nature. Petitioners supply no concept of the term "private right" which affords any antistance toward an understanding of this contention. Investigation as to the ambiguity when considered in the frame of reference of this particular case. It has been described as "A term which cannot be defined further than to may that it includes all those duties due from one person to another for the breach of which the law gives an action" 72 C.J.S. 015. The courts have defined it variously as, " * " such rights when applied to property, as persons may possess unconnected with, and not essentially affecting, the public interest, or growing out of a public institution of society" Rugh v. Ottenheimer, 6 Ore. 231, 237, 25 Am. Rep. 513); " * those (rights) which the inhabitants of a local district enjoy exclusively. , and the public has no interest therein" (Savoie v. Town of Bourbonnuis, 229 Ill. App. 561, 90 N.E. 2d 645, 649; See also, Village of Hartford v. First National Bank, 307 III. App. 447, 30 N.E. 2d 524, 527; Rhobidas v. Concord, 70 N. H. 90, 116, 51 LRA 381).

Furthermore, even if it were to be assumed that Petitioners had some kind of "private" right they would not be entitled to the injunctive relief sought in these proceedings. The Depression Court of Pennsylvania has determined that the state Anti-Injunction Act under which relief was sought by Petitioners deals not with rights but with "the particular research of injunction." Alliance Auto Service, Inc. v. Cohen, 241 Pa. 189. (Italies supplied) Hence, Petitioners' real problem in this case is not the astablishment of his "right," but rather, the demonstration of the availability of a specific remedy in a particular forum. The non-availability of the practice remedy in the particular tribunal has been conclusively decided to Petitioners by the construction placed on the state statute prescribing such remedy by the highest court of the state.

In sum, Petitioners have utterly failed to establish that the state statute deals with "private" as distinguished from "public" rights; or, that the particular right claimed by them is indeed "private"; or, that even if it were "private," a remedy by injunction was available to them under the state law.

POHT H

The State Court Had No Authority to Issue as Injunction in This Case Because the Union Activity Complained of Was Regulated and Proscribed by Congress, and the Activity which the Union Actually Engaged in Was Either Protected by Section 7 of the Pederal Act or Was Freed From Regulation Other Thea by the National Board, or Was Nevertheless Left Free From State Regulation.

In addition to its determination that the regulation of the conduct complained of by Congress constituted "preemption" the Supreme Court of Pennsylvania held that the remedy prescribed by the federal statute was "adequate and complete." R-288. This removes any basis for a claim for equitable relief at least prior to exhaustion of such statutory remedies. Pennsylvania Rules of Civil Procedure, Rule 1509 (b).

A. The general rules relation to preemption which this Court has laid down with respect to the field of labor relations requires affirmance of the Supreme Court of Pennsylvania.

The Supreme Court of Pennsylvania considered the "problem" presented he this case to be whether, under the circumstances, the Federal statute "constituted an absolute and complete preemption of the field so as to precise State action" (R-232). Upon an examination of the State and Federal statutes, the allegations of the complaint, and the principles of preemption as laid down by this Court, it determined that the State Court was without jurisdiction over this particular cause of action (R-238). In the light of the provisions of the state statute, as has been established above, and the pattern of regulation adopted by Congress for the field of labor relations, it will be demonstrated that the decision of the state Supreme Court is correct.

The question of the relationship between Federal and State law in the field of labor-management relations is not a new one. By this time it has been passed upon by this Court on many occasions. From these decisions a number of clear-cut principles have emerged, which can be briefly summarised.

The states have been excluded from regulating or applying state remedies where:

(a) Congress has provided a specific regulation relating to the particular matter or affecting the particular relationship (Hill v. Florida, 325 U.S. 538; Plankinton Packing Co. v. Wisconsin Board, 338 U.S. 953; Amalgamated Association v. Wisconsin Board, 340 U.S. 383; and, International Union v. O'Brien, 339 U.S. 454);

See Appendix C, pp. 72-74 inc., setting forth the pattern of regulation.

- (b) Congress has authorized the Board to regulate or pass upon a particular matter or relationship, whether the Board has actually acted on such authority (Bethlehem Steel Co. v. N.Y.S.L.R.B., 330 U.S. 767) or has not (La-Crosse Telephone Corp. v. Wisconsin Board, 336 U.S. 18);
- (c) Congress has considered the regulation of a particular matter or relationship, and has rejected it either in whole or in part (Amalgamate: Association v. Wisconsin Board, supra, and, International Union v. O'Brien, supra).

A restricted area for state regulation survives, limited to the following situations:

- (d) Congress has specifically delegated authority to the states to regulate certain particular matters (Algoma Plywood and Veneer Co. v. Wisconsin Board, 236 U.S. 309).
- (e) Union conduct or tactics as distinguished from purpose or object under certain circumstances (Allen-Bradley Local v. Wisconsin Board, 315 U.S. 740; United Auto Workers v. Wisconsin Board (Briggs-Stratton case) 386 U.S. 245.

The application of the foregoing principles to the instant case clearly requires affirmance of the decision of the court below. For, as shall be demonstrated, the conduct complained of and claimed to be unlawful, has already been regulated and prescribed by Congress in the Federal Act Furthermore, as shall be shown, the actual conduct engaged in by Respondent Union was not unlawful; rather, (a) it was either protected by Section 7; or, (b) the question whether it was protected by Section 7 was exclusively for the Board; or, (c) even if it was outside the protection of Section 7, Congress left it free from regulation by the states.

B. The conduct complained of and claimed to be unlawful has already been regulated and proscribed by Congress Petitioners, in their efforts to obtain relief through the State Court, filed a complaint which, at the 10th paragraph, set forth a conclusionary allegation in the words of the State Statute. The Supreme Court of Pennsylvania has determined that such grievance is the same as the unfair labor practice within the purview of Section 8(b) (2) of the Federal Act. 16

The basis of the construction which the Pennsylvania Supreme Court placed upon subsections (b) and (c) of Section 4 of the State Anti-Injunction Act, supra, and upon the Petitioner's allegation in Paragraph 10 of the Complaint is demonstrated by their comparison with Section 8(b) (2) of the Federal Act. 11

Subsection (b) of Section 4 of the State Anti-Injunction Act and the conclusionary averments in Paragraph 10 of Petitioners' Complaint may also relate to the same activity which Congress prohibited by Section 8(b) (1) (A) of the Federal Act. That particular provision declares that it shall be an unfair labor practice for a union "(1) to restrain

Buch juridical construction is conclusive on this appeal. Petitioners concede that the grounds upon which they relied (and which the state statute prescribed) to obtain relief in the state court described a violation of Section 8 (b) (9) of the Federal Act. Petitioners' Brief (p 15) states: "At the same time Section 8 (b) (9) empowered the National Labor Relations Board to prevent the same conduct for the public purpose of protecting the free flow of interstate commerce." (Italies supplied.)

¹⁸ See N.L.R.R. v. National Maritime Union (C.A. 2) 175 F 2d 686; In re: American Radio Asa'n, 83 NIRB No. 151, 24 IRRM 1109, 1007; In re: United Mine Workers of America, 83 NIRB No. 185, 24 IRRM 1158; In re: Denver Building Trades Council, 90 NIRB No. 224, 26 IRRM 1862; In re: Mackey Radio & Telegraph Co., 90 NIRB No. 106 28 IRRM, 1879; In re: Medford Building Trades Council, 90 NIRB No. 10, 28 IRRM 1495. See size, House Conference Report No. 510, on H. R. 3020 (30th Cong. 1st sees.) pp. 48-44 which points out that the Senate amendment (as embodied in Section 8 (b) (2) was much broader than the House proposal and spells out its coverage so as to include the matters described in the conclusionary allegation in Paragraph 10 of the Complaint.

or coerce (A) employees in the exercise of the rights guaranteed in section 7" and one of the rights guaranteed employees by section 7 is the "right to retrain from any or all such activities." This construction is supported by the decision in the case of Direct Transit Lines, Inc. v. Teamsters Union, (U.S.D.C. Mich.), 29 LRRM 2402, aff'd (C.A. 6) 199 F 2d 89. See also, Capital Service, Inc. v. N.L.R.B. (C. A. 9) 204 F 2d 848.

Thus, since the complaint, upon which Petitioners must of necessity rely for relief, depends upon an allegation which is squarely within the purview of the specific terms of the Federal Statute, this case presents an intrusion upon the "ambit of regulation" undertaken by Congress which permits of no survival of state authority. Hill v. Florida, supra. In point of fact, the offensive element of the conduct charged against the Union in the instant case is the same as that which was the basis for the cause of action in the Plankinton case, supra. 12

Just as "congressional imposition of certain restrictions on (the) right to "trike" * * shows that Congress has closed

In that case the union "caused" an employer to discriminate whereas in the case here on review, the ution is merely charged with an "attempt to cause" an employer to discriminate. Since Section 8 (b) (2) of the Federal Act has the same prohibition against an "attempt to cause" as it does against the "cause," the rule laid down in the Plankinton case is controlling here.

¹² This proposition is reinforced by the explanation of the Plankinton case which appears in footnots No. 12 to the opinion of the late Chief Justice Vinson in the Amalgamated Association case, supra, wherein it is stated: "* Section 7 * also guaranteed to individual employees the 'right to refrain from any and all such activities', at least in the absence of a phice shop of similar constructural arrangement applicable to the individual. Since the N.L.R.B. was given jurisdiction to enforce the rights of the employees, it was clear that the Federal Act occupied this field to the exclusion of state regulation. Plankinton and O'Brien both show that states may not regulate in respect to rights guaranteed by Congress in Section 7."

to state regulation the field of peaceful strikes in industries affecting commerce" (Amalgamated Association v. Wisconsin Board, '240 U.S. 304; and International Union v. O'Brien, 339 U.S. 457) so can it be stated that Congressional imposition of certain restrictions upon the objectives and purposes of concerted activity by union's and their members, as is specifically illustrated by Section 8(b) (1) (A) and (2), has closed to state regulation the field of union concerted activity in the industry in which Petitioners are engaged.

Indeed, it is not necessary for this Court to hold that the conduct complained of does constitute a violation of Section 8(b) (2) or (1) (A), or both. Even if that question is a marginal one (as we understand is the contention of the Congress for Industrial Organisations in its Amicus Brief) nevertheless the state is barred from acting. For as is shown in this Brief at pp. 30-31, infra, Congress has entrusted the determination of that marginal question to the National Board and not to a myriad of state courts all over the country. Any other rule must lead to chaos by the effectuation of the national labor policy.

O. The actual conduct engaged in by Respondent Union was either (a) protected by Section 7, or (b) freed from regulation other than by the National Board.

Thus far this Brief has considered the case, as did the Supreme Court of Pennsylvania, purely upon the allegations of the complaint. Turning, however, to the record and the undisputed evidence, it becomes clear that Respondent Union's conduct was removed from state jurisdiction on broader grounds. For that conduct was either protected by Section 7 or, its protected or unprotected character was exclusively for Board determination; or, if determined to be unprotected, Congress nevertheless left it free from regulation by the states.

(1) The conduct was protected by Section 7.

The evidence in the case of issue, as distinguished from the allegations in Petitioners' complaint, establishes clearly and conclusively that the aid of the state court was being sought in a field from which it had been ousted by Congressional action.

Petitioners are engaged in the transportation of freight by motor vehicle and conduct a pick-up and delivery pervice for the Reading Railroad Company and its freight trucking division. It also provides interchange and delivery service for other trucking companies. "The federal board has jurisdiction of the industry in which (this) particular (employer is) engaged and has asserted control of their labor relations in general." Bethicken Steel Co. v. N.Y.S.L.R.B., supra, (330 U.S. 776). Phillips Transfer Co. 69 NLRB No. 62, 18 LRRM 1231. The Respondent Union's activity consisted solely of an appeal to Petitioners' employees to loin the organization by the use of a picket at the Petitioners' terminal

That the sole purpose of the picketing was thus limited was established beyond doubt or cavil. Respondent Union did everything possible to make sure that no one could misnaperstand or infaronating the purpose of its astarty.

In short, it is clear that the picketing in this case was purely for organizational purposes and that no finding to

This was the one facility of Petitioners where all of their drivers went daily and was their actual place of employment. (R-57s, 50s, 50s) Respondent Union advised other affiliates of the same International of the limited purpose of the picketing and requested them to "refrain from any activity." in order that no one may minimize our objects and purposes. (Findings of Fact No. 15, 17ts, 175s) It advised the employer that "this is a means of advertising." we are simply doing this to try to sell the men to join the Union. (Finding of Fact No. 19, R-175a) The conduct and purpose of the Respondent Union in pursuance of the activity was so unequivocal and free from

the contrary can find support on this record. As such it was "protected" activity under Section 7 of the Federal Act. 15

History and tradition have firmly established the proposition that picketing is labore' method of communication in furtherance of their economic objects es . Congress in stating the policy for the interest courts through the emerment of the North-La Guardin Act (47 Stat. 70, 2011). S.C. Sec. of Invalues the real of objecting for such purpose tron just eint restraint (St. URCA Rect. 105, 104 (a) (e) (f) (1) and 119) Bection 7 of the Wagner Ac. (29 FRUA Sec. 157) must be viewed against this background. The legisla-

doubt that the trial cours was compelled to enter d'indiagn of Pacitinst The picketing - " was at all times conducted in an erdeny and nearestal manner (No. 17, R-174s) that the Huton did not clears or in any other man attempt to course neutral employers are did it induce or encourage concerned action to be acaptivess of neutral employers to return to transport freight to and from Petitinoers' tempines (No. 18 and 10 E 174s) and, that the Herondem Union at no time charactered sities directly or indirectly to picket Patitiques if they did not competition in propagatized employers in join the Union, and in feel did age at our time recovers to the case, directly or indirectly contact Potitioners, in an about to have them recognize it on the bacquillar firms for their amorphism that anythere likes recognize it on the bacquillar firms for their sentential angles than recognize it on the bacquillar firms for their sentential angles for have accurated as to the parameter of the activities must or accurate to have been recoved by the indian that Respective must or accurate in the religible matter that a character in the religible contact on the indian that Expections Union a contracts in the religible matter that after their respective and parameters as a condition of employment party after their triples are proported union has an about more and presentation of employment to a certification.

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constitutionally protested as is about in Point V of

this Brief, fairs pp. 45-64, inc.

13 Daugherty, Labor Problems in American History (Honghton-Villin, 1941) p. 487; Stein et al., Labor Problems is America (Patrez and Rinehart, 1940) pp. 610, 611.

tive history of the section demonstrates that Congress desired to preserve organising activities of the same stops as those ametioped by the Norriska Grardia Act (M. Song. Ret. 7670). That such inpulative considerations were expressed in the statute becomes infilinguiable upon comparison of the language of Section 7 of the Wagner Act with Section 2 of the Norriska Grandia Act.

The 1947 encodenent to tearter I does not attest the range of activities explorated and perfectled by the Fig. her Act. The shallton of the earth of employees file tearing from concentrate activities to the sect of Control constant processing activities. The penalthionis presented at the tearing the earth activities. The penalthionis presented at the tearter 5(b) (1), and (2) of the amendment has described the trailer within which the right to refrain? It processes and to not include which the right to refrain? It processes and to not include penalthic the right to refrain? It processes and to not include penalthic the right to refrain?

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Conjects has empowered the Board and not the state courts to determine whether conduct. — h as is presented by the record of this case, is protected. — e Act. Adjudiention by state courts and the issuance of blanket injunction orders frustrate the Pederal policy. Gt. Alabama and U. Boy. c.

The this case of Ginnary, etc., at al. v. Moral Trades Council (Al. 954 P 3d 506, Justice Carter discouting (with Giben Ch J and Trayrow, J.) in the well-measured minority opinion decletes: "Their discouries means that in cases each as this (i.e., a controversy as to whether the activity is protected by Scotion 7 or prohibited by Section 8 (b) it rests with the Board to determine, at least at this stage of the proceeding, whether an unfair labor practice has been committed and to take much action as it doesns advisable. This Court earnot, therefore, be concerned with the question of whether in fact there have been unfair inbor practices committed." (254 P 2d 571)

Letter to the ALA (correct by Section 1 at the French Ant) shout to declared breakle area though that particular places of the rebject matter has not been taken up by the following space; " Yapler c. Litterito Crest Line & So., 248 S. S. 505, and the Deckshow Steel To steel at Analysis of the Freign and the Residence of the Court of the Analysis of the Table And the Deckshow Steel To steel at Analysis of the Table. As was explained by this Charte he Analysis of the Court of the Cou

The will of Coupress the to be Mesowerd in well by what the ingulatures has not declared, in by what they be a expressed." Housing a Rose 6 Wheat I, 20-22

The Congressional intention with impact to drysnius tional picketing is established by the legislative biotocy.

On April 11, 1947, the House Laber Committee reported out a Bill (H. R. 3020), which would have made unlawful the very activities affecting commerce of which Petitioners

It exists as stated in the Brippe Ofraction case, supra, because of the Act of Congress which made an "express delegation of powers to the Board to permit or forbid this particular union conduct, from which an exclusion of state power [can] be implied." (Italics supplied) (206 U. S. 255)

complain. The BE defined a list of activities which, "when affecting communed, shell be unlawful concerted activities" (But 17 (a), and in that category included (1 Leg. Hist. access 17-73):

"Sec. 15 (a) * * *

- (3) Picketing an employer's premises for the purpure of leading persons to believe that there exists a labor dispute involving such employer, is said one in which the employees are not incolved in a labor signate with their employer:
- (b) Calling, authorizing, engaging in, or assist-

O. Any " " concerted interference with an employer's operations, an object of which is (i) to compel an employer to recognise for collective bargaining a repreentative and certified under Section 9 " " or (iii) to concert on employer to giolate any fact."

The Bill provided that private parties injured by any of these unlawful acts could sue for damages and injunctive railed, and that those found to have engaged in such activities thall be subject to deprivation of rights under this Act to the same extent as a person found to have engaged in an unfair labor practice. *** Furthermore, the Bill provided that any combination by labor unions, for the purpose, fater also, of engaging "in any concerted activity declared to be unlawful under Section 12." and shall be deemed in

The italised portions are in effect the gravamen of Petition-

24 Secs. 12 (b), (c) and (d), in 1 Leg. Hist. supra 79-80.

As described by a minority of the Committee, the provisions of the Bill were "so drastic as to make virtually every strike illegal." H. Minority Rep. No. 245, 80th Cong., 1st seen, p. 386, in Vol. 1, Log. High super 186.

restraint of trade and subject to the civil and criminal pensities of the Sherman Act."

These provisions, had they become law, would have schieved the same result as Petitioners sought through their suit. Since here, as Petitioners' complaint alleges in paragraph 4 (R-5a), the employees of Petitioners did not have a labor dispute with Petitioners', the Union's, picketing would fall under Section 12 (a) (2) of the proposed Bill, Since paragraph 10 of the complaint charges that the Union's picketing sctivities seek to compel Petitioners to course their emiloyees into joining the Union, a violation of federal law, such activities would come within Section 12 (a) (b) of the proposed Bill. Accordingly, Petitioners would have been entitled to an injunction against, and damages on account of, all such picketing.

However, the provisions discussed did not become less. Instead of fathy prohibiting such picketing and conciling sweeping prohibitions against it, Congress carefully considered the entire field of picketing and boycotting and ultimately decided that the better procedure was to prescribe a limited number of unlawful acts [Section 8 (b)].

That the Labor-Management Relations Act, 1947, contemplates stranger picketing and its legality in labor-management disputes is also clear from Section 2 (9) of the Act [29 II. S. C. A. Section 152 (9)] which defines "labor dispute." Thus, the term labor dispute, "includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, reportless of solether the disputants stand in the proximate relation of employer and employe." (Italies supplied.)

²⁵ Secs. 301 (1) and (b) in 1 Leg. Hist, supra 92-94.

in addition to succeeding dissectedly the kinds of section tip to be probiblised Compress size rejected the remedies prorided by the Bills, reported by the Bouse Committee After much discussion, it was the dee to withhold from private parties the right to obtain in maritye rolled against the pro-

We believe this establishes that, whether or not organimplored picketing be found by the Board to be "protected" by Section 7,50 such activity at least was determined by Congress to be free of prohibition or regulation or regulation by strage the Paderal or State sutherity." O'Brien and Amel generated Association cases, supra, 1780 U.S. 458, 840 U.S. and seaso

Subsequent to the ensument of the Labor Management Belation Act of 1847 Congress considered the imposition of restraint upon activities such as those complained of by Lettings, and religious is the contraction that these activities be free trom regulation.

th Cong. Box a. j. 1816-1817. See the 9 Log. Hist. 1998-1924.

Figure Hamilton's Lat. As NLRB No. 166, 27 LRRM 1836; and, Smith's Hamilton's Lat. As NLRB No. 186, 37 LRRM 1836, where the Beard decrement the place of a saturative anion to engage in percental picketing for representational evapores notwithstanding its discissment of interval in a representational evapores notwithstanding its discissment of interval in a representation presentation before the Board.

If the dispute on Resident I (b) (1) in the Course further supports the constitution than the society here introduced the act the constitution in the Act. Sanctor Test, in the crume of his week to Sanctor Montal adjections that the proposal would have the offers of sections would have the offers of sections to approximational strikes (Val. 1, Lee Mattery of Labor Montal continue and in 1847, a 1197) stands. He resident, I can see socialize an abor position as section while "I would in sense way patient action. It would continue threats against employees. It would not called engaged, actions as would prevent acquired engaged for strike in a legitiment way, conducting peopolal picketing or employees persection. All it would do would be to outlaw each restraint and coercion as would prevent people from going to work if they wished its go to work." (Vol. 2, Leg. Hist, p. 1907) they wished to go to work." (Vol. 2, Leg. Hist. p. 1907)

In accordance with the intention expressed in Title IV of the Labor Management Relations Act of keeping a continued watch on the field covered by the Act, committees of Congress, subsequent to the exactment of the law, have made further studies to determine whether the law required amendment. Thus, on December 31, 1948, Congress through its Watchdog Committee reviewed the policy and operation of the Act. This Committee, in reviewing the legislative history of the Act, reported (S. Rep. 986, Part 3, 80th Congress, 2nd sees.):

Proposals to regulate strikes conducted for the purpose of compelling employers to violate Federal and other laws were considered by the Eightieth Congress turing the time the present act was being formulated. The bill as passed by the House (H. R. 3020, 80th Conglist seed) provided that a strike for recognition or to remedy practices for which an administrative remedy is available under the act or to compel an employer to violate any law shall be unlawful. As remedies for unlawful practices, it allowed a sait for damages, made provisions of the Norris-La Guardia Act inapplicable, and deprived any person who engaged in such a strike of his rights under the act for a period not exceeding one year.

An early committee print of the Senate Bill (S. 1126, 30th Cong. 1st Sess.) contained a provision which would have denied the benefits of the act to any employee or labor organisation which conducted a strike to compel an employer to remedy practices for which an administrative remedy was available under the act, or to compel an employer to violate a provision of the act, or any other law of the United States.

However, during the last few months preceding enactment, the Board's decisions reflected a stiffening

attitude regarding strikes conducted for unlawful objectives. Noting this change, the managers on the part of the House stated in the conference report that amendments to prohibit such activities seemed 'unnecessary' (H. Rept. 510, 80th Cong. 1st Sess. p. 39), and the amendments were not included in the law as finally enacted" (pp. 83-84).

The Watchdog Committee, in commenting on this section of the report of the Conference Committee, stated that additional legislation was now required. It was recommended that Section 13 of the 1947 Act be amended as follows (p. 87):

"Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right, but this Act shall not be construed as conferring any remedy under sections 7 and 8 if it is a strike, an objective of which is to compel an employer to—

- (1) . . .
- (2) • •
- (3) violate a provision of this Act or any other law of the United States."

The Committee stated further that (p. 87):

"If the Congress agrees with the committee that the employer who refuses, at the risk of a loss of his business, to yield to a union's illegal demands is entitled to more protection than the possible deterrent provided by a loss to the participants of their rights under the act, another remedy is suggested."

It was therefore recommended that a new subdivision be added to Section 8 (b) (4) to read as follows (p. 87):

"(E) Forcing or requiring any employer to violate a provision of this act or any other law of the United States."

If prohibited by Section 8 (b) (4), such conduct would be subject to injunctive relief upon application by the Board to the District Court (Sec. 10 (e) of the Act). All of the foregoing recommendations were rejected.

Thus, Congress has adhered to the judgment which it made when it enacted the Labor-Management Relations Act, viz., that the public interest is better served if picketing of this nature is unhampered.

POINT III

Petitioners' Purported Analysis of the Federal Act and its Legislative History is Unsupportable.

A. The authorities relied upon are not germane to the issues presented by this case.

Petitioners' Brief (pp 21-61) is a lengthy, elaborate and we submit mistaken—effort to show that Congress in the Statute and its legislative history expressed its intention not to supersede State Court jurisdiction in the field covered by the Act. It will be found upon examination that the quotations given are out of context and do not sustain the proposition urged by Petitioners. The few references indicating an area of jurisdiction for State authorities concern only such matters as threats, violence, mass picketing and similar infractions of ordinary police measures of every local community. Congress, in proscribing such Union conduct made it clear, that such local police regulations remained unimpaired; and, that is the full extent to which the references cited by Petitioners can go.

In essence such conduct would constitute an independent violation of the laws of the State relating to the protection of the persons and property of its citizens Malthough with conduct may, within the context of a particular labor controversy, incidentally also violate the Federal Statute, it is fundamentally a violation of a general rule of conduct applicable to all individuals and is regulated by the State as mch *

A more accurate appraisal of the Statute and its legis: lative history inevitably leads to a directly opposite conclusion than that advanced by Petitioners. Such examination, to which we now turn, will establish that Congress left no room for State regulation of the conduct involved in the instant case

in connection with labor disputes." (p. 751).

⁻ Most of the cases cited in Petitioners' Brief as authority for regulation are within the scope of this proposition. For example: State regulation are within the scope of this proposition. For example, the following cases sited by Petitioners involve mass picketing, violence, or threats of injury to person or property. Southern Bus Lines v. Amalgamented Ase'n. 305 Miss. 354, 38 S. 3d 755; Rice and Holman v. United Electrical Workers, 3 N. J. Super, 538, 65 A 3d 258; Thayer v. Binnall, 220 Mass. 467, 35 A. E. 3d 193; Edwin Mills Inc. v. Textile Workers, 364 N. C. 391, 67 S. E. 3d 373; Worter Mills v. Textile Workers, 364 N. C. 391, 67 S. E. 2d 373; Worter Mills v. Textile Workers, 360 Pa. 359; Molders Union v. Texas Foundries, Inc. (Tex. Oir. App. 341 S. W. 3d 215; Williams v. Codartown Textile, 208 Gs. 659, 38 B. Rd 705; Russet v. Intersactomal Union (Ala.) 64 S. W. 2d 384.

The following involves situations based upon brench of contract: Union Oil Co. v. Oil Workers Union, California Super Ot. 108 Oal., App. 3d, 513, 230 P. 2d 71; General Building Contractors Ase'n v. Local Duism. 270 Pa. 73; Lines Oil Co. v. March (Ark.) 249 S. W. 3d 560.

The following involves a text action based upon procurement of breach of contract; Art Steel Co. v. Volanques, 111 N. Y. S. 3d 198.

In the Allen-Bradley case, supra, which arcse during the Wagner Act, the conduct complained of involved mass pastering and threats of bodily injury to the person and property of the employees, matters traditionally within the police power of the State in preserving law and order. Thus, the Supreme Court, in upholding the state's power declared that the situation was "not basically different from the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes." (p. 751).

B. The language of the Federal Act and its legislative History clearly exclude parallel state action in this case.

The National Labor Relations Act of 1935 represented the first considered and intentionally permanent Congressional venture into the field of labor relations. It was a calculated effort to establish a uniform nation-vide labor relations policy. As stated by former Associate Justice Owen J. Roberts: "For years the country had been plagued by labor controversies. Statutes and decisions in the various states differed widely, and it was thought that a uniform system of regulation of labor relations would aid in the solution of the problem. The question arose whether Congress could establish a uniform system for the whole nation. Addressing likely to the problem, Congress adopted the National Labor Relations Act." Hoberts, The Court and the Constitution, pp 49, 50 (1951).

Through this legislation, Congress established the National Labor Relations Board which it designated "as the instrument to assure protection from the described unfair conduct in order to remove abstructions to interstate commerce." Amalgamated Utility Workers v. Consolidated Edison Co., 349 U.S. 281, 265. The Statute was consequently denominated "federal legislation, administered &7 a national agency, intended to solve national problem, on a national scale * * Jerome v. United States, 318 U.S. 101, 104." N.L. R.B. c. Hearst Publications, 322, U.S. 111, 123.

This Statute was clearly intended to bar the states from concurrert regulations. As this Court has said, Congress in the Wagner Act spoke "So unequivocally as to make clear that it intends no regulation except its own." Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 236.

No changes which are relevant here were made by the 1947 amendments. Centralization of control over the national labor policy in the Board was still essential. By the pattern of regulation" of the amended Act as in the predeccesor Act, "Congress has worked out elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience, and has provided for the handling of unfair labor practices by an administrative agency equipped for the task." Amason Cotton Mill Co. v. (C. A. 4) Textile Workers Union. 167 F 2d 183, 187. This mechanism was the product of the design and intention of Congress to insure "disinterested, public interest standards and expertness of a governmental agency which has the initiative control of retributory measures." Bruce's Juices, Inc. v. American Can Co., 330 U.S. 743, 751,

The 1947 amendments to the Wagner Act were consider ered by Congress at a time when the proper balancing of state-national relationships in the field of labor relations was a burning issue. The Bethlehem Steel case, supra, had just been decided. The question of federal and state authority in this field was fully debated. Every aspect of the problem was considered. When Congress spoke, its words were carefully weighed and its determination was clear cut and definite, Section 10(a) of the amended Act contains its basic judgment as to the line to be drawn. It retains the exclusive power of the National Board to administer and enforce the Act and occupy the field comprehended by the national labor policy, except in a narrow ambit specifically spelled out in the provise to that Section. That provise provided for cession of jurisdiction to state agencies under certain circumscribed circumstances.

³⁰ See Appendix C. pp. 72-74 inc.

Congress was well aware that the broad grant of power to the Board in Section 10(a) "preempts the field that the Act covers insofar as Commerce within the meaning of the Act is concerned." H R Rep. No. 245, 80th Cong. 1st sess., 44 (1947) quoted with approval in Amalgamated Association v. Wisconsin Board (340 U. S. 383).

Accordingly, conscious of the pre-emptive character of the Act over all matters in the field not specifically excepted, Congress took great care in each and every instance where it intended state action to spell it out in precise terms. One such instance of delegation, and that which relates to the power of the states to regulate union security contracts under Section 14 (b), was reviewed by this Court in Algoria Plywood and Veneer Co. v. Wisconsin Board, supra, and it was made clear that the states were empowered to act because, and only because, the Congressional history of the legislation and the precise language of the statute expressly preserved that power for the states. Other such instances of specific delegation in addition to the foregoing are set out in the footnote. Petitioners place great stress upon the deletion of the word "exclusive" by Congress in its 1947

[&]quot;I (1) Congress in the regulation of the duty to bargain collectively required the parties, as a condition precedent to the termination or modification of an existing contract, to file a thirty-day notice of the existence of a dispute with the State mediation or conclisation service, Scotion 8 (d) (3), (2) In the treatment of labor disputes, the Act authorises the Federal Mediation & Conciliation Director to "establish suitable procedures for co-operation with the state and local mediation agencies," Section 202 (c), (3) The Act directs that both the Director and the Service shall "avoid attempting to mediate disputes which would have only a minor effect on interestate commerce if State conciliation privious are available to the parties," Section 203 (b), (4) Finally, Section 203 (b) permits suits for damages to business or property resulting from boycotte or other unlawful combinations defined in Section 203 (a) to be brought in either the federal district courts for in any other court having jurisdiction of the parties." (Italics supplied.)

amendment to Section 10 (a). They contend that the deletion of that word constituted a grant of authority for state court to act in this case. It is submitted, however, that is the light of the many manifestations of Congressional intention to vest administration and enforcement of the policies expressed in the Act in the Board with the supplementary assistance of the courts limited to specified conditions and situations; the presence or absence of the word "exclusive" does not after the construction compelled by the terms of the statute.

As stated by this Court in the case of Rethlehem Steel Co. c. N. Y. L. R. B., 330 U.S. 767, 772, "it long has been the rule that exclusion of state action may be implied from the nature of the legislation and the subject although express declaration of such result is wanting."

The legislative history retutes Petitioners' contention. As was explained by the House conferees, the characterization of the Board's power as "exclusive," while proper under the more limited Wagner Act, was no longer an appropriate description under the comprehensive pattern of regulation devised by the 1947 amendments because the amended act contained new "provisions authorizing temporary injunctions emjoining alleged untain labor practices" at the suit of the Board in the Foderal District Court while awaiting proceedings before the Board, and also "provisions making unions smalls" for money damages in flection 505 arising out of conduct proscribed by Section 8(b) (4). (II. Conf. Rept. No. 510, 80th Cong. 1st seen. 52). This explanation demonstrates beyond dispute that Congress did not intend by the omission of the word, to abandon its carefully devised comprehensive scheme of enforcement to the vagaries of thousands of inexpert tribunals. Amazon Cotton Mill Co. c. Testile Workers Union, (C.A. 4) 176 F. 2d 183, 187; Gerry v. Superior Court, 32 Cal. 2d 115, 134 P. 2d 689, 694,

195; McNich c. American Bress Co., 139 Conn. 44, 89 A 2d 500, cart. den. 73 S. Ot. 363; Born v. Cones, 101 F. Supp. 478, 477 (D.C. Alenta).

The nee of the term "exclusive" in describing the power of the Board in Section 10(a) of the Wagner Act was not a requisite to assure the Board powers of such character but was marely confirmatory of the requirements of the Act. See Assalpenated Utility Workers v. Consolidated Edison Co., 200 U.S. 200. The describination of whether enforcement machinery created by Congress is archaive to not dependent upon its specific description as such. As this Court has held, "The specification of one rempty normally excludes another." Resistance's Union v. National Mediation Board, 120 U.S. 207, 201.

This Court has evidently noted the absence of the word "exclusive" in the Algeria case, super; and his stated that: "Section 10 (a) of the Tark Hartley Act " " contains important changes, but none requiring a modification of the conclusion reached as to the corresponding section of the National Labor Relations Act " " (336 U.S. 313).

Thus, the exclusive character of the Board's power must continue notwithstanding the deletion of the word texclusive. The amended Act makes the intention to delact concurrent state remedies insucapable. For as this Court stated is Colffornia, v. Zook, 306 U.R. 725, 732; "When State as forequest mechanisms to beint it to Potenti officials are to be excluded, Congress may my so, as in the Labor Management Relations Act, 1947."

The foregoing is clearly dispositive of Petitioners' effort to tailor the legislative history to suit their needs. What has already been said plainly leaves no room for an injunction suit by private parties to forbid the conduct complained of in this case. But, could any doubt remain, it is completely

distipated by consideration of stores shall disting the legislature process to gother processes such authority to private parties—information which were entailed by Congruent and referred on the merits.

A minority of the Senate Lebor Compelifies centreed of Senators Tart, Ball, Disseall and denote proposal and provide persons he addowed direct proposal to the original Courts for injunctions for certain violations of the Action (S. Rep. No. 185, Seth Cong. 1st seen Stalk is senator Bell introduced in attendenes to this effect and vigocounty enged its adoption in debate. It Cong. Dec. (Otherosis, The Senator Bell introduced in debate. It Cong. Dec. (Otherosis, The Senator Bell introduced in debate. It Cong. Dec. (Otherosis, The Senator Bell introduced in the debate. It cong. Dec. 4847. It was survied nown because culto-content seas determined along details entranced from the administrative agency which would, contrary to Senator Builds where the passes of Senator Bell influences before the Courts are permitted in passes of Sum.?

93 Cong. Rec. 4836, and because of the digital feet that private recourse to injunctive ratio, won. Contractor the unfamented ere of government by injunction. 25 Cong. Rec. 4836, 4844, 4843; are also, 4884, 485, 4064, 4841, 5446, 4842, 4843; are also, 4884, 4855, 4864, 4841, 5446, 4843; are also, 4884, 4855, 4864, 4841, 5446, 4843; are also, 4884, 4855, 4864, 4843, 5446, 4843, 5864, 4843, 5864, 586

After the remedy of private injunction was that to jected, a compromise proposal of manage damages cally to private parties for conduct problithed by faction S(h) (4) was offered and adopted, 93 Grag Rev. 4963-4544, 4268-4665, 4874.

Since, against such background, the only factored action which Congress authorized private parties to influte in any court (state or federal) are sain for damages, any other remedy is prohibited. It is prohibited both in falleral and state courts. Ourgress having considered and rejected

For the rejected minority view see also, S. Rep. No. 108, 50th Cong., 1st sees. 54.

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the lastest case is an example. The Union reside to picter the argenticational purposes in June, 1949. Victor of matter of days, is found itself exploited by the Union Court by a transporary injunction from all picketing for any parapeters whatevers. Putitioners in their logist (p. 94) my dear the Actional Board Mill not then the courter jurisdiction here," but they until the cettical fact that the Board could not exercise jurisdiction until and unless a charge was that with it, I considering which Ratitioners did not do but show to can to the State Court lastest.

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Publishers' argument, that the Northquil Brand was relied the "to "the and the forequent attending to their course to manufactual, the Manufactual to observe the attending to the property of the second to the approximation of the course the second the course of the course the second to the course, the tangent the course it has no way of knowing, what is improving much day on applications for temporary injunctions, in the thoremore of triumpals throughout the land.

Been where it does know, the Board does not have the tacilities to take action. In the instant case, its aid was informally sought by the Union when the case was being ap-

As the Supresso Court of Pennsylvania later pointed out, Petitioners would have had an "adequate and complete" remedy before the Board (R-286, 228).

pealed to the State Supreme Court. We were told that the Boxes was sliming muside to undertake the policing of the many such came at the state level.

Had Pectiform that a charge with the Board as they should have that appear would have processed the case to Congruent listenated. The estimates would kneel been accreated to make map a peter facts came existed; the Calon's proceeding to the discount of the possibly protected character to the picketing under heatien 8(4) would have been purely as the picketing under heatien 8(4) would have been purely as to the relational expert on that subject; had a the action by the relational expert on that subject; had a the action by the relational expert on that subject; had a the action by the relational expert on their subject; had a the action by the relational expert on their subject; had a the action by the relational expert on their subject; had a the action of the subject of behavior at picketties would have been involved as at least minimized.

The deprivation of the Union's rights in this case thereigh improper invocation of the State machinery line tenter the window of the principle chanciated by this Court when it said "We do not think that a case by case test of followid superconcey is paralleethic here." Bethicken Steel Co., case, 400 U.S. of Tilk

In this case, suffice the Brigge Straffes case, copys, invocation of state authority was wholly unnecessary to limit "individual and group rights of agreeming and defence" or to exhibition "processes of justice for the more primitive method of trial by combat?" (436 U.S. at 352). Petitioners, if wronged by the Union's activity, bad access to the "processes of justice" art up by Congress and which the Supreme Court of Pennsylvania determined to be "comprehensive " " adequate and complete." (B-256, 238).

Argument

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The analoguest force of this case establish that Respondent's activity was limited to the exercise of their constitutionally guaranteed right of free speech. Their conduct consisted solely of advertising an appeal through pickets to nonunion workmen to join their organization." The lower court enjoined the activity on the conclusionary finding that it went "beyond the field of persuasion into the field of intimidation or business compulsion delibcrately designed to course Petitioners, by causing it substantial business losses to compel " " " its employees to be come members of the Union." There was absolutely no evidentiary basis for this flading. The direct, positive and undisputed evidence relating to the purpose of the picketing was not ansceptible to the inference drawn therefrom."

The right to picket peacefully and truthfully is one of organised labor's lawful means of advertising its cause, and

There is absolutely no evidence of any other purpose. That such was in fact their purpose is supported by their preparations for such entirity, the absence of any departed upon the employees, the absence of any departed upon the employees of neutrals as well as the absence of any camericus upon its measure. (Findings of Fact, Mon. 11, 12, 15, 16, 17, 26, 26, 37, 28, 20, 50, 32, 11-1745-1755).

If The extent of the business losses as stated by the trial court is an additional conclusion. Garner admitted that his Reading Haitroad business was not affected. (ROMA) The relationship of such business to the total business was not shown. This layer of fact was not tested in these proceedings because it was not a relevant factor under the Anti-Injunction. Act, suppra.

so Finding of Fact No. 40, R-179a.

³⁷ See findings listed in footnote numbered 34 above. It will be noted that such findings point in a direction opposite to that of the trial court's inference or pressed in Finding of Fact No. 40. See also,

as such, is guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, and also, Article 1, Section 7 of the Constitution of the Commonwealth of Pennsylvania, as an incident of free speech. Some o. Tile Layer's Union 301 U.S. 468; Phornkill v. Alabama, 310 U.S. 88; Carlson e California, 310 U.S. 106; Kirmas e. Adkr. 811 Pa. 78; Friedman v. Blumberg, 842 Pa. 587; and numerous other cases. The quality of the free speech guaranteed by the constitution is such that it includes the dissemination of information on a number of subjects within the scope of our industrial economy and particularly the advantages of organisation." Consequently peaceful and truthful picketing, for the purpose of appealing to and otherwise persuading employees to join a labor organization, has been held to be protected as an incident of free speech. American Pederation of Labor v. Swing, 312.U.S. 321, and Friedman v. Blumberg, supra. Such picketing, "carried on solely for organisational purposes," is within the constitutional protection. Painters Union v. Rountree Corp., 194 Va. 148, 72 S. E. 2d 402, quoted with approval in Plumbers Union c.

Henderson v. National Drng Go., \$48 Pa. \$01, 25 A 2d 745, \$67, \$08, which requires that when an inference of ultimate fact is drawn from facts whose existence is itself based only on an inference all prior inferences must be established to the crotusion of any other theory. If the purpose of the picketing was to be inferred many more logical conclusions, all lawful in nature, suggest themselves, such as picketing to inferm the public; or, to seek a bargain for its members only.

This Court has the power to march the record in this case to determine the merit of the constitutional question raised herein * * * "it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality." Drivers Union v. Meadowmoor Dairies, 312 U. S. 287, 293, 294.

In Thomas v. Collins, 323 U S. 516, 65 S. Ct. 315, at 342 it was held: "* The right thus to discuss and inform people concerning the advantages and disadvantages of unions and joining them is protected not only as a part of free speech, but as a part of free assembly."

Grakiam, —U.S.—, 73 S. Ct. 585; Garner v. Teamsters, 378 Ps. 19; Pappas v. Local Joint Board, —Ps.—, 96 A 2nd 915; and Tomagno v. Waiters Union, 373 Pa. 457.

Picketing, however, is not beyond the control of a State "if the manner in which (it) is conducted or the purpose which it neeks to effectuate gives ground for its disallowance." Baker and Pastry Drivers and Helpers v. Wohl (315 U.S. 769 at 775). In pursuance with the limitations suggested by the last cited case, picketing has been enjoined because of its manner, in Drivers Union v. Meadowmoor, 312 U.S. 287; Carnegie Illinois Steel Corp. v. United Steelsoorkers, 353 Pa. 420: Westinghouse Electric Corp. v. United Electrical, 353 Pa. 458; and Worter Mills, Inc. v. Textile Workers Union, 369 Pa. 359. Picketing likewise, has been enjoined because it sought to effectuate an illegal purpose or object as in Giboney v. Empire Storage and Ice Co. 336 U.S. 490, where it was for the avowed purpose of compelling an employer to violate a state anti-trust statute; or, because it was used as a medium to control an employer's business, as in Teamsters v. Hanke, 339 U.S. 470; or compel an employer to violate the policy of a state an enunciated in its labor laws, as in the cases of Building Service Union v. Gazzam, 339 U.S. 532; Wilbank v. Chester and Delaware Counties Bartenders Union, supra, and, Phillips and Ostroff v. United Brotherhood of Carpenters, supra.

Neither the undisputed evidence nor any inference with is legally deducible therefrom brings the instant matter within the purview of the above-cited cases. Nor have the principles enunciated in such cases impinged upon the free speech guaranty which was expressed in suport of picketing in the Thornhill, Carlson & Swing cases, supra, and which is applicable here. (Compare: Painters Union v. Rountree Corp., supra, with Plumbers Union v. Graham, supra.)

The only reason offered by the trial court for the reasoning process or inference which it employed to reach the conclusion necessitated by the decree was that the picketing was inducing third persons to withhold patronage to Petitioners' economic loss and hence was "coercive."

The reasoning of the lower court is in error not only because it disregards the laws of evidence as has been mentioned above, but also because it misconceives the significance of such coercion as may be inherent in constitutionally protected picketing.

Picketing, being an incident of speech, partakes of those qualities which are inherent in the full and free exercise of the right to disseminate information. Potentially the use of such right may affect adversely some one's interests. Mr. Justice Murphy explained these possibilities in the case of Thornhill v. Alabama, supra, (310 U.S. 104):

of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group it society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may be persuaded to take action inconsistent with its interests " " (Italies our own)

The limits marked for the exercise of the constitutional prerogatives as set forth in Cafeteria Employees Union v. Angelos (320 U.S. 293 at 295): as "* * acts of coercion

going beyond the mere influence exerted by the fact of picketing * * "" have not been exceeded in the instant case where there was a complete absence of force, threats, violence, or boycott.

Respondents in the case at issue at all times acted within the limits approved by the Pennsylvania Supreme Court in Kirmse v. Adler, supra, where, after a review of the evidence which established that the activity did not cause people to congregate, or tend to draw a crowd of noisy or disorderly people, and did not constitute a nuisance, it was held that "There was no annoyance, intimidation, or moral coercion from these acts" (311 Pa. 88).

The facts as found by the court below precluded its conclusion of "coercion" and provided sanction for the picketing. The findings that those drivers who refused to make deliveries acted solely by reason of their personal adherence to a union tradition and the absence of even as much as an implied threat of reprisal destroyed the foundation essential for actionable coercion and qualified the picketing in the instant case as lawful by the test established by the Pennsylvania Supreme Court in Kremse v. Adler, supra, where the lower courts' finding of coercion was rejected because:

"The minds of the parties who received or saw the notice were free to follow their unrestrained inclination; they were at entire liberty to go to the theater unmolested if they saw fit. There was not the slightest allusion to a threat of any character " " " (Italics supplied) (311 Pa. 87)

The Surreme Court of Pennsylvania has continued to protect placeful picketing for organizational purposes.

⁵⁰ See Finding of Fact No. 30, R-177a.

⁴⁰ See Findings of Fact No. 20, 30, 32, R-177a, 178a.

Garner v. Teamsters, supra; Pappas v. Local Joint Board, supra; and, Tomango v. Waiters Union, supra.

The effect of the decree of the trial court would be to sanction the exercise of the right to picket only where its use and enjoyment prove to be ineffectual and fruitless, and to bur the right, where it evokes a response "Such a rule results in a complete negation of the right itself. Mr. Justice Douglass indicated that such a construction was not permissible under the rule enunciated in Thornhill's case, supro, in his concurring opinion in the case of Bakery and Pastry Drivers v. Wohl, supra, when he said (315 U.S. 775):

"If the opinion in this case means that a State can prohibit picketing when it is effective but may not prohibit it when it is ineffective, then I think we have made a basic departure from Thornhill v. Alabama, 310 U.S. 88 * * *"

This court demonstrated that it had no intention to depart from the basic tenets of Thornkill's case, supra, when in the case of American Federation of Labor v. Swing, supra, it held (312 U.S. 326):

" * Communication by such employees of the facts of a dispute deemed by them to be relevant to their interest, can no more be burred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's case * * *" (Italice supplied)

⁴¹ The court below appears to have exaggerated the econonic impact of the picketing on Petitioners' business in view of the evidence to the effect that some of the unionized drivers of Petitioners' customers passed the pickets (47c, 53a, 54a, and 78a) and its further Finding of Fact No. 5, 172a, to the effect that "the picketing here in question did not prevent Central from making deliveries of these interstate shipments." It is to be noted that no award of damages was entered by the court below.

However, since the lower court resorted to an "endsmesons" test to infringe upon a fundamental right it becomes a matter of substantial consequence that this view
and its implications be scrutinized with great care and
grave concern. The recent expressions of this Court, emanating from the decision in the Wahl case, supra, indicating
the presence of coercive ingredients in picketing as a means
of communication have used a variety of attempts by lower
courts to divide libor's traditional method of communicating
its mesonge into the elements of "communication" and "compulsion" with the latter factor negating the former. Unless
the line is abarply delineated to permit peaceful picketing
ander the circumstances of the instant case the "communiention" aspect of picketing will be destroyed.

Peaceful picketing for a lawful purpose, as a means of communication, cannot be denied constitutional protection because of its economic impact without doing substantial violence to free society. Labor unions, denied this form of communication must, for survival, turn to others. Will they then be denied the press, the radio, or the television as each such medium demonstrates effectiveness with the readers and auditors? Logic compels the conclusion that if the effectiveness of a means or method of communication is to determine the protected quality of speech, then, at one time or another, and under some circumstance that must mevitably occur in our ever changing and dynamic society, every means or method of communication must be denied us. It is impossible to atomize the methods of communication into separate legalistic components without destroying the very right to communicate itself.

This Court has indicated the line of demarcation which it follows in the recent decision in Plumbers Union v. Gra-

No State of

how," supra, by its comparison of the application of the constitutional guaranty to the facts of that case with its approval of the application of such guaranty by the state court to the facts of the case of Painters Union v. Rountres Carp.," supra. The Supreme Court of Virginia in the Rountres case, supra, considered facts almost identical with those presented by the record in the case here in review, and held that "If the penceful publication of the facts in an effort to unlouise the painters resulted in economic pressure on the complainants." " that result did not make the purpose unlawful or the picketing illegal." (Italica supplied) (72 S.E. 2d 405)

Picketing, as in the instant case, as a means of publicising an appeal to workmen to join a union conducted peacefully, and at their regular place of employment, does not
become actionable because it influenced third persons to
withhold their patronage. The principle as expressed in
the Thornbill, Swing and Angelos cases, supra, quoted above,
and in Mr. Justice Douglass' concurring opinion in the
Wohl case, supra, has been resolved into the controlling rule
which is set forth in the Restatement of the Law of Torts,
Vol. 4, Page 97, Section 775:

"Workers are privileged intentionally to cause barm to enother by concerted action if the object and the means of the concerted action are proper; they are subject to liability to the other for barm so caused if either the object or the means of their concerted action is improper."

The facts in that the Graham case bring it within the purview of the rule in the Gazzam case, supra.

The facts in the Rountree case are almost identical with those presented by the case here on review.

^{**} Particularly where as here it was found as a fact that Defendant Union did not induce or encourage concerted action of such third persons.

Armment

From the foregoing authorities, it is quite clear that the finding of the unlawful object essential to justify judicial restraint of peaceful and truthful picketing must be based upon proof of facts other than and independent of the effect of mere picketing as such upon third persons and the resultant economic impact upon Petitioners' business. The possible coercive quality inherent in the mere fact of picketing does not supply the unlawful object essential to disqualify the activity from the protection of the constitution.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be affirmed.

> Sidney G. Handler, Edward Davis, Counsel for Respondents.

On the Brief:
Sidney G. Handler,
Morris P. Glushien,
October, 1953.

APPENDIX A

The relevant provisions of the Pennsylvania Labor Relations Act (1937 June 1, P. L. 1168 No. 294 43 PS 211.1 et. seq.) are as follows:

The Act as originally cancted is shown in roman; the amendments are shown in italics.

PENNSYLVANIA LABOR RELATIONS ACT

SECTION 2:

(a) Under prevailing economic conditions, individual employes do not possess full freedom of association or actual liberty of contract. Employers in many instances, organized in corporate or other forms of ownership associations with the aid of government enthority, have superior economic power in bargaining with employes. This growing inequality of bargaining power substantially and adversaly affects the general welfare of the State by creating variations and instability in competitive wage enter and working conditions within and between industries, and by depressing the purchasing power of wage carners, thus-(1) creating sweatshops with their attendant dangers to the health, peace and morals of the people; (2) increasing the disparity between production and consumption; and (3) tending to produce and aggravate recufrent business depressions. The denial by some employers of the right of employes to organize and the refusal by employers to accept the procedure of collective bargaining tend to lead to strikes, lock-outs, and other forms of industrial strife and unrest, which are inimical to the public safety and welfare, and frequently endanger the public health.

Appendia A

- (b) Experience has proved that protection by law of the right of employee to organize and bargain collectively removes cartain recognized acazers of industrial strife and careat, encourage practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and tends to restore equality of bargaining power between employers and samployers.
- (c) In the interpretation and application of this act and otherwise, it is hereby declared to be the public policy of the Binte to encourage the practice and procedure of collective bargaining and to protect the enercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from the interference, restraint or coercion of their employers.
- (d) All the provision of this act shall be liberally construed for the accomplishment of this purpose.
- (c) This act shall be deemed an exercise of the police power of the Commonwealth of Pennsylvania for the protection of the public welfare, prosperity, health, and peace of the people of the Commonwealth:

BECTION 5:

Employee shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

SECTION 6:

- (2) It shall be an unfair labor practice for an employer—
- (a) To interfere with, restrain or everes employes in the exercise of the rights guaranteed in this act.
- (b) To dominate we interface with the formation or administration of any labor organization or contribute financial or other material support to it: Provide. That subject to rates and regulations made and published by the board surmation to this act, an employer shall not be per-infilted from permitting suppleyes to confer with him during working hours without loss of time or pay.
- (e) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organisation. Provided That nothing in this act, or in any agreement approved or prescribed thereunder, or in any other statute of this Commonwealth, shall preclude an employer from making an agreement with a labor organisation (not established maintained or assisted by any action defined in this act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employes, as provided in section seven (a) of this act, in the appropriate collective bargaining unit covered by such agreement then made and if such labor organization does not deary norm bership in its organization to a person or persons who are employes of the employer at the time of the making of such agreement, provided such employe was not employed in violation of any previously existing agreement with said labor organization.

- (d) To discharge or otherwise discriminate against the employs because he has died charges or given testinony under this set.
- (a) To refuse to bargain collectively with the represeptatives of his sampleyer, subject to the provisions of section seven (x) of this set:
- (f) To deduct, collect, or ments in collecting from the ways, of employee any duce, fore, successful, or other mentalbushess preside to any labor or positivations, makes he is employed to to do by a majority rate of all the employed in the appropriate collective bacquainty upit taken by econorbullat, and unless he thereafter repotent the scritter matterial action from each employe solves sugges are affected.
- (2) It shall be an entain labor practice for a labor or principles or a labor or principles or a labor organization, or any one acting in the interest of a labor organization, or for an employed or for exployed or exployed
- the respect and with the total of competing such amplique to the respect of the total of competing such amplique to join for to refresh from Joining such takes engineering, or for the perpention of representation for the perpension of representation for the perposes of collection of representation for the perposes of collection bargalains.
- (b) Daving a labor dispute, to join or become a part of a sit down strike, we without the employer's authorization, to raise or hold or to damage or destroy the plant, equipment, machinery, or other property of the employer, with the intent of compelling the employer to accrde to demande, conditions, and terms of employment including the demand for collective bargaining.

Appendio A

(c) To intimidate, restrain, or coerce any employer by threats of force or violence or horse to the person of said employer or the members of his family, with the intent of compalling the employer to accede to demands, conditions, and torms of employment including the demand for collection baryaining.

(d) To engage in a secondary boycott, or to hinder or present by threate, intimidation, force; boorcion or substage the obtaining, use or disposition of materials, equipment or services, or to combine or complies to hinder or present by any manual schatecours, the obtaining, use or disposition of materials, equipment is services.

(a) To call, institute, maintain or conduct a strike or boycott against any employer or industry or to picket any place of business of the employer or the industry on account of any jurisdictional controversy.

APPENDIX B

The relevant provisions of the Labor Injunctions Act (1937 June 2 P. L. 1198, 43 PS 206 et seq.), are as follows:

The Act as originally enacted is shown in roman; the amendments are shown in italics.

LABOR INJUNCTION ACT.

SECTION 1:

In the interpretation of this act and in determining the jurisdiction and authority of the courts of this Commonwealth, as such jurisdiction and authority of the courts of this Commonwealth, as such jurisdiction and authority are defined and limited in this act, the public policy of this Commonwealth is hereby declared as follows:

(a) Under prevailing economic conditions developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganised worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, selforganisation, and designation of representatives of his own choosing to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor or their agents in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

- (b) Equity procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the responding party or parties or that permits sweeping injunctions to issue after hearing based upon written affidavits alone and not wholly or in part upon examination, confrontation and cross-examination of witnesses in open court is peculiarly subject to abuse in labor litigation for the reasons that—
- (1) The status quo cannot be maintained, but in necesearly altered by the injunction.
- (2) Determination of issues of veracity and of probability of fact from affidavits of the opposing parties that are contradictory and under the circumstances untrustworthy rather than from oral examination in open court is subject to grave error.
- (3) Error in issuing the injunctive relief is usually inreparable to the opposing party; and
- (4) Delay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact unavailing in the particular case.

SECTION 3:

When used in this act and for the purposes of this act-

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in a single industry, trade, craft or occupation, or have direct or indirect interests therein, or who are employes of the same employer, or who are members of the same or an affiliated organization of employers or employes, whether such dispute is—(1) between one or more em-

players or associations of employers, and one or more employers or association of employers (2) between one or more employers or associations of employers and one or more employers or association of employers; or (3) between one or more employes or association of employes, and one or more employes or association of employes; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

- (b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, craft or occupation in which such dispute occurs or has a direct or indirect interest therein, or is a member, officer or agent of any association composed in whole or in part, of employers or employes engaged in such industry, trade, craft or occupation.
 - (c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment or concerning employment relations or any other controversy arising out of the respective interests of employer and employe, regardless of whether or not the disputants stand in the proximate relation of employer and employe, and regardless of whether or not the employes are on strike with the employer.
 - (d) The term "court" includes every court of common plens of the several counties of this Commonwealth; including the judge or judges thereof.
 - (e) The term "complainant" includes every person whether plaintiff or defendant in the cause who seeks affirmative relief.

- (f) The term "defendant" includes every person whether plaintiff or defendant in the cause against whom affirmative relief is sought.
- (g) The term "employer" is declared to include master, and shall also include natural persons, partnerships, unincorporated associations, joint-stock companies, corporations for profit, corporation not for profit, receivers in equity and trustees or receivers in bankruptcy.
- (h) The term "employe" is declared to include all natural persons who perform services for other persons, and shall not be limited to the employes of a particular employer, and shall include any individual who has ceased work as a consequence of, or in connection with, any matter involved in a labor dispute.
- (i) The term "organization" shall mean every unincorporated or incorporated association of employers or employes.
- (j) The term "labor organization" shall mean every organization of employes, not dominated or controlled by any employer or any employer organization, having among its purposes that of collective bargaining as to terms and conditions of employment.
- (k) The term "employer organization" shall mean every association of, or agency representing, or maintained by, employers, having among its purposes or activities that of studying or advising concerning relations between employers and employes, or bargaining, negotiating or dealing with employes or labor organizations.

SECTION 4:

No court of this Commonwealth shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case included within this act, except in atrict conformity with the provisions of this act, nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this act. Exclusive jurisdiction and power to hear and determine all actions and suits coming under the provisions of this act, shall be vested in the courts of common pleas of the several counties of this Commonwealth. Provided, however, That this act shall not apply in any case—

- (a) Involving a labor dispute, as defined herein, which is in disregard, breach, or violation of, or which tends to procure the disregard, breach or violation of a valid subvisting labor agreement arrived at between an employer and the representatives designated or selected by the employes for the purpose of collective bargaining as defined and provided for in the act, approved the first day of June, one thousand nine hundred and thirty-seven (Pamphlet Laws, one thousand one hundred sixty-eight), entitled "An act to protect the rights of employes to organize and bargain collectively; creating the Pennsylvania Labor Relations Board+ conferring powers and imposing duties upon the Pennsylvania Labor Relations Board, officers of the State government and courts; * * * and amendments thereto or as defined and provided for in the National Labor Relations Act, approved the fifth day of July, one thousand nine hundred and thirty-five; Provided, however, That the complaining person has not, during the term of the said agreement, committed an act as defined in both of the aforesaid acts as an unfair labor practice or violated any of the terms of said agreement.
 - (b) Where a majority of the employes have not joined a labor organization, or where two or more labor organizations are competing for membership of the employes and any labor organization or any of its officers, agents, representatives, employes or members engages in a course of con-

duct intended or calculated to coerce an employer to compel or require his employes to prefer or become members of or otherwise join any labor organization.

- (c) Where any person, association, employe, labor organization, or any employe, agent representative or officer of a labor organization engages in a course of conduct intended or calculated to coerce an employer to commit a violation of the Pennsylvania Labor Relations Act of 1937 or the National Labor Relations Act of 1935.
- (d) Where in the course of a labor dispute as herein defined an employe or employes acting in concert, or a labor organization, or the members, officers, agents, or representatives of a labor organization or anyone acting for such organization, seize, hold, damage, or destroy the plant, equipment, machinery, or other property of the employer with the intention of compelling the employer to accede to any demands, conditions, or terms of employment, or for collective bargaining.

SECTION 6:

No court of this Commonwealth shall have jurisdiction or power in any case involving or growing out of a labor dispute to issue any restraining order or temporary or permanent injunction which, in specific or general terms, restrains or prohibits any person, association or corporation from doing, whether singly or in concert with others, notwithstanding any promise, undertaking, contract or agreement to the contrary, any of the following acts:

- (a) Ceasing or refusing to perform any work or to remain in any relation of employment.
- (b) Becoming or remaining a member of any labor organization or of any employer organization.

Appendic B

- (c) Paying or giving to, or withholding from, any person any strike or unemployment benefits, or unemployment insurance, or other moneys or things of value.
- (d) By all lawful means aiding any person who is being proceeded against in, or is prosecuting any action or suit involving or raising out of, a labor dispute in any court of the United States or of this Commonwealth, or of any state.
- (e) Giving publicity to, and obtaining or communicating information regarding the existence of, or the facts or merits involved in, any labor dispute, whether by advertising, speaking or picketing or patrolling any public street or place where any person or persons may lawfully be, or by any other method not involving misrepresentation, fraud, duress, violence, breach of the peace or threat thereof.
 - (f) Organizing themselves, forming, joining or assisting in labor organizations bargaining collectively with an employ by representatives freely chosen and controlled by themselves, or for the purpose of collective bargaining or other mutual aid or protection, or engaging in any concerted activities.
- (g) Persuading by any lawful means other persons to cease patronizing or contracting with or employing or leaving the employ of any person or persons.
 - (h) Cenaing or refusing to work with any person or group of persons.
 - " (i) Ceasing or refusing to work on any goods, materials, machines or other commodities.
 - (j) Assembling peaceably to do, or to organize to do, any of the acts heretofore specified, or to promote their lawful interests.

- (k) Advising or notifying any person or persons of an intention to do or not to do any of the acts heretofore specified.
- (1) Agreeing with other persons to do or not to do any of the acts heretofore specified.
- (m) Advising, urging or otherwise causing or inducing, without misrepresentation, fraud or violence, others to do or not to do the acts heretofore specified; and
- (n) Doing in concert with others any or all of the acts heretofore specified:

SECTION 7:

No court of this Commonwealth shall have jurisdiction or power in any case involving, or growing out of, a labor dispute to issue a restraining order or temporary or permanent injunction—

- (a) Upon the ground that any of the persons participating or interested in the labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section six of this act; or
- (b) Forbidding any of the acts enumerated in section six upon the ground that illegal acts have been committed or threatened in the course of any labor dispute, or that any ends sought to be accomplished by any party to the labor dispute are illegal.

SECTION 9:

No court of this Commonwealth shall issue any restraining order or a temporary or permanent injunction in any case involving or growing out of a labor dispute, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court to the effect—

- (a) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained, but no temporary or permanent injunction or temporary restraining order shall be issued on account of any threat or unlawful act, excepting against the person or persons, association or organization, making the threat or committing the unlawful act, or actually authorizing or ratifying the same after actual knowledge thereof.
- (b) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted.
- (c) That, as to each item of relief granted, greater injust will be indicted upon complainant by the denial of relief than will be indicted upon defendants by granting of relief.
- (d) That no item of relief granted is relief which is prohibited under section six of this act.
- (e) That complainant has no adequate remedy at law;
- (f) That the public officers charged with the duty to protect complainant's property are unable to furnish adequate protection.

Such hearing shall be held only after a verified bill of complaint and a verified bill of particulars specifying in detail the time, place and the nature of the acts complained of, and the names of the persons alleged to have committed the same or participated therein, have been served, and after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city, within which the unlawful acts have been threatened or committed, charged with the duty to protect complainant's property. The hearing shall consist of the taking of testimony in open court with opportunity for cross-examination and testimony in opposition thereto, if offered and no affidavits shall be received in support of any of the allegations of the complaint.

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APPENDIX O

Outline of Procedures for Vindication of Rights Claimed by Petitioners Available Under Labor-Management Relations Act, 1947.

Congress, in the enactment of the Labor-Management Relations Act of 1947 declared it to be the policy of such legislation "to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for the interference by either with the legitimate rights of the other, * * * to define and proscribe practices on the part of labor and management which affect commerce * * and to protect the rights of the public in connection with labor disputes affecting commerce" (Section 1 (a)) expressly found that " * * The denial by some employers of the right of employees to organize . . lead to strikes * * * which have the effect of burdening * * * commerce * * * Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury * * * (and) has further demonstrated that certain practices by some labor oganizations * * * have the * * * effect of burdening * * * commerce: "and, accordingly declared it "to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce * * * by protecting the exercise by workers of full freedom of association, self-organization * * * for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." (Section 101)

Pursuant to such findings and policy the Act establishes the Board, creates the office of General Counsel, and empowers the Board "to prevent any unfair labor practice (listed in section 8) affecting commerce." (Sections 3(a), (b), (c), (d), and 10(a)) These unfair labor practices consist of the conduct which Congress considered to be in derogation of the rights guaranteed by Section 7, wherein it is provided that "Employees shall have the right to selfcrganization, to form, join, or assist labor organizations • • to engage is other concerted activities for the purpose of collective bagaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities * * "," and include, inter alia, interference, restraint or coercion of employees by either an employer or a union, in the exercise of the rights guaranteed by Section 7, (Section 8(a)(1) and (b)(1)(A).), and the causing or any attempt, by a union, to cause an employer to discriminate against an employee in violation of subsection (a) (3) of Section 8, which prohibits an employer from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in a union. (Section 8(b) (2) and (a) (3))

Anyone (other than a labor organization which has failed to comply with certain filing requirements prescribed by Section 9(f)(g) and (h) of the Act) may seek redress against unfair labor practices by merely filing a charge with the Board. (Section 10(b)) This action sets in motion the machinery of an inquiry. Upon receipt of the charge, the Board, by its General Counsel is vested with authority to issue a complaint and notice of hearing which are served upon the party charged with the prohibited conduct. The person so complained of has the right to file an answer and to appear at a hearing to defend against the charge at a time which shall not be less than five days after service of the complaint. (Section 10(b)) At the hearing, which is based upon the issue raised by the complaint and answer

and is usually conducted by a trial examiner, evidence is offered in support of the positions of the respective parties and a record is made, reduced to writing and filed with the Board. (Section 10(b)) The Board, upon the record, enters its findings of fact and issues such order as in its judgment "will effectuate the policies of this Act." (Section 10(c)) Thereafter, either the Board may seek enforcement of its order, or any "person aggrieved by a final order of the Board granting or denying" relief may seek its review, in the United States Circuit Court of Appeals, which is vested, within the scope of permissible review, with "exclusive" jurisdiction to decide the controversy. (Section 10(c)) and (f))

In any case wherein it is charged that a person of union "has engaged in or is engaging in an unfair labor practice" as provided for in Section 8(b)(1)(A) or (2) the "Board shall have the power, upon issuance of a complaint * * to petition any district court of the United States * * for appropriate temporary relief or restraining orde * * * " (Section 10(j)) In any such case where the Board seeks temporary injunctive relief the restrictions of the Norris-La Guardia Act are declared to be inapplicable. (Section 10(h))

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IN THE

Supreme Court of the United States OCTOBER TERM, 1953

NO. 58

JOSEPH GARNER AND A. JOSEPH JARNER, trading as CENTRAL STORAGE & TRANSFER COMPANY,

Petitioners,

18.

TEAMSTERS, CHAUFFEURS AND HELPERS, LO-CAL UNION NO. 776 (AFL), ED LONG, President, ALLEN KLINE, Business Manager, its other officers and agents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF OF AMERICAN FEDERATION OF LABOR. AMICUS CURIAE

Reasons for Intervention as Amicus Curiae

The American Federation of Labor has requested and has been granted permission by the parties to this proceeding to file a brief amicus curiae. It has sought intervention because of the overwhelming importance of a determination respecting jurisdiction to interpret and enforce the provisions of the Taft-Hartley Act or to enforce provisions of state laws which parallel the Taft-Hartley Act. While that issue remains unresolved, labor organizations affiliated with the American Federation of Labor throughout the

country have been and are being beset with a multiplicity of injunction proceedings in the state courts under which such state courts are being asked to and have been issuing injunctions in fields affecting interstate commerce, on the basis of union conduct which the state courts deem violative of the National Labor Relations Act, as amended in 1947. or on the basis of state laws which forbid activities already forbidden by the Federal Act. A number of these state court proceedings have been reported and are set forth in the brief of the employer-petitioners; many more remain unreported, but under them various customary activities of labor organizations have been enjoined in wholesale fashion without resort to the procedures specified in the Federal Act: Unless the remedy for alleged violations of the National Labor Relations Act or a state courterpart thereof can be invoked only in the exclusive and safeguarded method provided by Congress, namely, upon application of the National Labor Relations Board in the federal courts, the most shocking aspects of that period sometimes referred to as the era of "government by injunction" might well be repeated.

Statement of the Case

The briefs filed by the parties hereto indicate that there is no essential dispute concerning the facts in this case, and such facts are well stated by the Supreme Court of Pennsylvania in the majority opinion filed herein. As indicated by that decision, it can be assumed for the purpose of this appeal that the union party herein has engaged in activities which violate Sections 8 (a) (3) and 8 (b) (2) of the Taft-Hartley Act, as well as Section 6 (c) of the Pennsylvania Labor Relations Act which is the exact counterpart of said (Section 8 (a) (3) of the federal law. In substance, the alleged illegal conduct consists of an attempt to coerce plaintiff-employers to commit a violation of such sections of the state and federal law by coercing such employers' employees to become members of the respondent.

union. Since interstate commerce was affected by the activities in question, if Congress can be shown to have intended to grant exclusive jurisdiction over the remedying of such alleged illegal conduct in the National Labor Relations Board and the federal courts, the state court would, as was determined by the Pennsylvania Supreme Court herein, have no jurisdiction to enjoin the alleged illegal activities. The ultimate question in this case, then, is—did Congress intend to occupy the field insofar as regulation or prohibition of this particular activity is concerned?

Argument

I

Petitioners' Associed Rights Are "Public" Rather Than "Private" in Nature.

Before discussing the all-important question of Congressional intent, it might be well to dispose of the major premise of what appears to be the employer-petitioners' principal argument. Petitioners' argument, in essence, is that petitioners are here seeking protection of "private," as distinguished from "public," rights and that, since such rights are "private," the state courts are free to enjoin activities which violate them even though the identical protections would not be available if such rights were "public," Congress having intended to vest exclusive jurisdiction in the federal labor board to protect "public" rights only. Faced with the determination of this Court in the Plankinton case (Plankinton v. Wisconsin Board, 338 U.S. 953, discussed later in this brief), petitioners herein apparently concede that, were the state-granted rights which it here seeks to vindicate "public" in nature, the jurisdiction of the federal courts in respect to them would be exclusive. It is submitted that both petitioners' premise and petitioners' conclusion are without foundation; that the rights asserted herein are no more "private" than those asserted in the

Plankinton case, and even if they could be considered "private" in nature, nevertheless Congress has preempted the field, so that the state court would have no jurisdiction to issue the injunction sought herein.

The "right" which petitioners seek to protect is the right under state law to be free from compulsion by picketing to require them to violate the Pennsylvania Labor Relations Act by discriminating against their employees by forcing them into the picketing union.

That petitioners' asserted "rights" herein are of a 'avivate" nature is merely asserted or assumed; it is not even indicated, let alone demonstrated, just how petitioners' alleged rights under the law of Pennsylvania can be considered "private." The fact and the law of the matter are, however, that these claimed rights derive exclusively and solely from the state Labor Relations Act which, as the counterpart of the federal Labor Relations Act, seeks solely to protect public rights. The determination of the Pennsylvania Supreme Court in this very case is conclusive on this question, for it indicates that petitioners' alleged rights derive not from the common law and not from some statute creating or protecting so-called "personal" rights, but rather from an act passed purely in the public interest. After quoting the identical language of Section 6 (c) of the Pennsylvania Labor Relations Act and Section 8 (a) (3) of the Federal Act, which outlaw employer activities designed to encourage or discourage membership in a union, the Court then quotes Section 8 (b) (2) of the Federal Act, which makes it an unfair practice for a union to cause an employer to violate Section 8 (a) (3) of the federal law. and states that by judicial construction of the state Anti-Injunction Act, as elaborated upon in Wilbank v. Chester and Delaware Counties Bartenders, Hotel and Restaurant Employees Union, 360 Pa. 48, 60 A. (2d) 21. certiorari denied 336 U.S. 945, it is likewise unlawful for

a labor organization to cause an employer to violate Section 6 (c) of the Pennsylvania Act. In this connection the Court states:

"Thus it will be seen that the Act of Congress prohibits the same activity on the part of a labor organization in this respect as does the Pennsylvania Labor Relations Act, the only difference being that the Federal act would stamp this picketing as an unfair labor practice, whereas the State act does not so list it but our courts have declared it to be unlawful because aimed to coerce the employer into committing what the act does declare to be an unfair labor practice on his part."

Clearly the ultimate rights for which petitioners herein seek protection are derived from the Pennsylvania Labor Belations Act which is expressly declared to be in the protection of the public interest. Section 2 (e) of that Act states as follows:

"This Act shall be deemed an exercise of the police power of the Commonwealth of Pennsylvania for the protection of the public welfare, prosperity, health, and peace of the people of Pennsylvania."

The Pennsylvania Labor Relations Act is patterned upon the Federal Labor Relations Act. In re Hodson Motor Co. (Court of Common Plens, Alleghany County), 5 CCH Labor Cases, ¶60, 927.

Under Section 8 of the Pennsylvania Act, the State Pourd is given exclusive power to enforce the unfair labor practice provisions of the state Act just as the federal Board, under the Wagner Act, was given such exclusive power. Nowhere in the entire Act, nor in any judicial construction of any provision thereof, is there any indication that the rights created and protected by the Act were intended to be private in nature. There is no more reason to assume or assert that the Pennsylvania Labor Relations Act created "private" rights than did the Wisconsin Labor Relations Act

which was before this Court in the Plankinton case, supra. Yet this Court had no difficulty in concluding that an attempt by the state of Wisconsin to enforce, in a field affecting interstate commerce, certain unfair labor practice sections of the Wisconsin Act which had a counterpart in the federal Act was invalid, the Congress having preempted the field.

I

Even Though Petitioners' Asserted Rights Are "Private," Nevertheless the State Courts Would Have No Jurisdiction to Enforce Them If Congress Has Regulated Respecting Such Rights.

In any event discussion of whether the rights here asserted by petitioners are "private" or "public" is beside the point. Even if such rights be deemed private in nature, nevertheless the state courts would have no jurisdicton because Congress has preempted the entire field of regulation or prohibition in respect to the particular activity which is the subject of the state injunction proceedings. It makes no difference whether the claim for relief is predicated on state statute, state common law, or on federal law, or whether the rights involved are public or private; as long as the particular activity which is claimed to be illegal and which a sought to be restrained is specifically regulated by Congress, that activity can be restrained only in the manuer provided for by Congress, namely, upon application by the federal Board in the federal courts. The only relevant consideration is whether the particular activity is in the "field" of regulation embraced under the federal law. If so, Congress's decision as to the rights of the parties leaves no room for survival of causes of action, either public or private, based on state statutory or common law which regulate or prohibit that identical activity. The Plankinton Packing Co. case, supra, is closely in point. There, all members of this Court deemed so obvious as to require no

discussion the proposition that the federal Act had occupied the field as to those rights, obligations and remedies specifically there set forth so as to exclude even concomitant state action. In a per curiam decision, without opinion, this Court held in Plankinton that, once Congress had established specific rights and obligations in the field of industrial relations affecting commerce (in that case the right! of employees to refrain from joining labor organizations; and the obligation of employers to refrain from interfering with employees in the exercise of this right and hat afforded specific remedies for breach thereof (through the National Labor Relations Board), state agencies were precluded from exercising even concurrent jurisdiction even where no conflict might exist. As stated by this Court when in Amalgamated Association v. Wisconsin Employment Relations Board, 340 U.S. f.n. 12, p. 390, it had occasion to discuss Plankinton:

"Since the NLRB was given jurisdiction to enforce the rights of the employees, it was clear that the Federal Act had occupied this field to the exclusion of state regulation. Plankinton and O'Brien both show that states may not regulate in respect to rights guaranteed by Congress in §7."

If, in the Plankinton case the action of the Wisconsin Board was stricken because the state had "superimposed upon federal outlawry of conduct as an 'unfair labor practice' its own finding of unfairness' (Amalgamated Association v. Wisconsin Employment Relations Board, 340 U.S. at 401), then also must be stricken any attempt by the state courts of Michigan to supersede or supplant, by invocation of a state law respecting the activity directly dealt with in the federal Act, the judgment of both the federal Board acting in its preliminary screening capacity under Section 10 (1) and the federal district court having jurisdiction to issue injunctive relief under that section. The occupation of the field by federal authority is equally clear in both

cases. Surely, if "states may not regulate in respect to rights guaranteed by Congress in Section 7," by the same token states may not remedy in respect to remedies prescribed by Congress in Section 10. It is submitted that Plankinson and the Bethlehem Steel Co. case (Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41) which preceded it are conclusive in the instant case.

Also directly in point is dictum in the earlier case of California v. Zook, 336 U.S. 725, at 731, where this Court gave explicit recognition to the proposition that state attempts to provide remedies and enforcement mecha isms in addition to those provided for in the Taft-Hartley Act are invalid even though they might be helpful to the federal Board:

"And when state enforcement mechanism to helpful to federal officials are to be excluded, Congress may say so, as in the Taft-Hartley Act, 29 U.S.C.A. \$100(a), 9 FCA Title 29, \$160(a)."

The later case of International v. O'Brien, 389 U.S. 454, is likewise clear authority for the proposition that there can be no room for concurrent state regulation of activities specifically dealt with in the Taft-Hartley Act. There, a state law regulating strikes in interstate commerce was declared invalid because invading a field preempted by Congress. After reviewing the provisions of the federal law regulating peaceful strikes for wages, the Court concluded that "Congress occupied this field and closed it to state regulation."

It is significant also that courts of last resort in the states of California, New York and Minnesota have held with Pennsylvania; the following cases all hold that state courts have no jurisdiction to grant interim of other injunctive relief for alleged violations of the Taft-Hartley Act: Gerry v. Superior Court, 32 Cal. (2d). 119, 194 P. (2d) 689; Ex Paste Di Silva, 33 Oct. (2d) 76, 199 P. (2d) 6; Costaro v.

Simons, 277 App. Div. 1045, rev'd 302 N.Y. 318, 98 N.E. (2d) 454: Norris Grain Co. v. Scafarers International Union, 232 Minn. 91, 46 N.W. (2d) 94. Furthermore, the Courts of Appeal for the Eighth and Ninth Circuits, as well as various of the federal district courts have indicated sharp disagreement with the concept that remedies other than those specifically provided for in the federal Act are available: See Amalgamated Association v. Diale Motor Coach Corp., 170 F. (2d) 902 (C.A.8); Schatte v. Theatrical Stage Employees, 182 F. (2d) 158 (C.A.9); certiorari denied, 340 U.S. 827; California Association v. Ruilding Trades Council, 178 F. (2d) 175 (C.A.9); I.L.U. v. Sunset Line & Troine Co., 77 F. Supp. 119 (N.D. Cal.); United Packing House Workers v. Wilson & Co., 80 F. Supp. 563 (N.D. III.); Textile Workers Union v. Berryton Mills, 28 LRRM 2540 (N.D. Ga., July 23, 1951); Born v. Cease, 101 F. Supp. 473 (D. Alaska); compare Requis v. I.B.E.W., 101 F. Supp. 542 (N. D. Tex.).

The following Federal District Court decisions all involve injunction suits removed from the state courts where they had been brought on a theory identical to the present one, namely, that "private" rights under state statutory or common law were sought to be protected. In each of these cases the respective district courts, in well-reasoned opinions, concluded that, since the activity sought to be enjoined had been the subject of federal regulation under the Taft-Hartley Act, the state courts were without jurisdiction.

Pocahonias Terminal Court o. Portland Building Trades Council, 93 F. Supp. 217 (U.S. District Court, D. Maine, S.D.), involved an attempt to invoke the common law of the State of Maine which gave a private cause of action to restrain secondary picketing for a closed shop. In sustaining the removal from the state court and in declining jurisdiction, District Judge Clifford sheld as follows:

[&]quot;... Since Federal law has comor a nsively entered

the field here immerced, the door must be regarded as obsert to parallel State Action.

This Court iberators holds on the authority of the very recent decision and analysis in Automobile Workers of Paris 180 C S. 154 118 Labor Cases 165, 7611 (1960). That because all of the activities alleged in the ecoplaint to be illeged are within the scope and severage of the union unlair know practices provisions of the Part Harriey Act, there is no room for the application M Stage law.

A similar result was obtained in Direct Trouble Lines, Inc. o. Local Upion 408, IT (UC, WD. Mich (1952)), 21 CCH Labor Cases 165,774, where a state court was beld without jurisdiction to enjoin violations of a Michigan statute against secondary boycotts which had its counterpart in Section 8 (b) (4) of the Taft-Harriey Act even when the complaint was later amended to allege other possible violations of Michigan law, which, however, in substance were subject to regulation under the federal law. See Direct Trussit Lines, Inc., v. Local Upion 406, IBT, 22 CCH Labor Cases [67,972]. Denial by the District Courts of the motion to remain was affirmed by the E. S. Court of Appeals for the Sixth Circuit is 199 F. 2d 69.

In Overton c. Interactional Brotherhood of Teamsters

In Overton v. Intersectional Brotherhood of Teamsters (Civil Action 810, 12(14), that users District Court hold that a claim for injunctive relief predicated upon the alleged violation of a common law duty of a common carrier to formish transportation to the general public was not entertainable in the state or federal courts because Congress and the Part Hartley Act had determined what labor activities did not what did not burden or interfere with interstate commerce.

In Ryon v. Simons, 277 App. Div. 1000, 100 N.Y.S. (2d) 18, affirmed 302 N.Y. 742, certiorari denied 342 U.S. 897, the New York courts held that an injunction suit in the state court, brought on the theory of a breach of a common law duty or agent to principal by entering into a contract with

an employer providing for a union shop, was, in substance, a claim predicated upon claimed discrimination in favor of union members which was a controversy involving unfair practices within the purview of the National Labor Relations Act, so that the state courts were without jurisdiction.

The foregoing four cases each involved, as does the present case, claims of invasion of alleged "private," as distinguished from "public" rights, arising by virtue of state statute or common law, and in all of them where the challenged union activity was one also regulated under the Taft-Hartley Act the courts found no jurisdiction to entertain the suit. Congress having preempted the field and having provided exclusive means for obtaining relief against such activities.

Assuredly in this case, if any, "This Court, in the exercise of its judicial function, must take the comprehensive and valid federal legislation as enacted and declare invalid state regulation which impinges on that legislation." (Amatgamated Association v. Wisconsin Employment Relations Board, supra, at 398.)

9.3

Congress Est. Expressly Logislated Conserving the Rights Americal by Positioners and Has Provided Broth-site Examples for the Production of Rock Rights. According to the Rock Congress Are Without Furticioning Dougress Exping Presuppose the Paid.

The foregoing discussion assumes but does not demonstrate Congressional intent to precupt the field. If ruch intent does exist, then obviously, the lastant claim for relief in the state court would fall, that court lacking jurisdiction. The remaining portion of this brief will be devoted to answering the ultimate question in this case, namely—did Congress intend to exclude state action in a particular field in which Congress had power to legislate? Where pos-

within, such intent is determined by resort to the language of the Act. When time to not clear or is inconclusive. Congressional intent to provings or exclude can be found either by resort to precumption, by resort to consideration of the rationales involved, or or resort to logislative history—to the explicit biology gives in the course of detector or it committee reports. In the present case an intent to make the remedies of the Act stack but also by resort to say of the other three methods of deligninising such intent.

A. The Bridge of Liversky Clarky Monifests, Congress Good Invent, to Make the Residence of the Ast Bridge ve.

While the strong recognize manufactor of the 126 challes fineld re-garding the Shire Compactor compositor the linguity foliations of the Acit. We can best begin by comparing the scope and nature of the Labra-Management Relations Act of 1947 (Tark-Hartley Act) with that of the National Labor Relations Act of 1986 (Wagner Act), with particular regard to the date of the law in respect to the question of remedy as it ordered prior to the passage of the latter Act. There are two hears differences between the two Acts, both signifi-east bers. Plant the 1927 Act andertook to prescribe broad regulations in the entire field of labor-management rela-tions, embracing both union and employer sativities. The earlier Act dealt solely with the problem of attempts by amployers to destroy or impede the right of employees to organize, bargain collectively, and engage in certain conorganize, bargain collectively, and engage in certain con-certor activities for their mutual aid and protection. Byen though thus limited, the first Act was recognized as one in the public interest for the protection of public rights ex-clusively by a public agency, not for private individuals by private action. As stated by this Court in respect to the 1985 Act (Amalgamated Utility Workers v. Consolidated Edison Co., 309 U.S. 261):

"The Board as a public agency acting in the public interest, not any private person or group, not any em-

ployee or group of employees, is chosen as the instru-ment to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce." (809 U.S., at 265.)

"... Congress has in this instance created a public agency entrusted by the terms of its creation with the exclusive authority for the enforcement of the provi-sions of the Act. (309 U.S., at 269.) "We think that the provision of the National Labor

Relations Act conferring exclusive power upon the Board to prevent any unfair labor practice, as defined, —a power not affected by any other means of 'preven-tion that has been or may be established by agreement, code, law, or otherwise—necessarily embraces exclu-sive authority to institute proceedings for the violation of the court's decree directing enforcement. The decree in no way alters, but confirms, the position of the Board as the enforcing sutbority. It is the Board's order on behalf of the public that the court enforces. It is the Board's right to make that order that the court sustains. The Board seeks enforcement as a public agent, not to give effect to a 'private administrative agency.' (309 U.S., at 269.)

In the 1947 Act Congress considered numerous proposale embracing almost every aspect of labor relations and emerged with a comprehensive code regulating relationships in that entire field. Following extensive debate and argument in respect to many hundreds of proposals, Congress finally arrived at specific conclusions respecting rights, duties, liabilities and immunities of employers, employees and labor organizations in the field of labor relations and selected specific remedies and forums for the protection and vindication thereof. Compare General Committee v. Missouri, K. & T. R. Co., 320 U.S. 323, at 332, and see Rabouin v. National Labor Relations Board, 195 F. (2d) 906, at 912. If Congress intended singleness and expertness of administrative remedy under the first Act, how much greater the need under the 1947 amendments with their comprehensiveness of scope and delicate balancing of intests, and if vindication of rights in the first Act was entrusted to a public agency acting in the public interest, how much greater the need for continuing this concept in the second Act where a far broader segment of the public was made liable to federal regulation? One would suppose that Concress would have utilized very clear language if it intended entirely to change the concept of public administration.

The second basic distinction between the Wagner and the Taft Hartley Acts is that under the latter the Congress was acutely aware, by virtue of decisions of this Court on the subject, of the grave problems of preemption and legislated specifically with that problem in mind. As stated by this Court in Amalgamated Association v. Wisconsin Employment Relations Board, 340 U.S., at 397:

was not only cognisant of the policy questions that have been argued before us in these cases, but it was also well aware of the problems in balancing state-federal relationships which its 1935 legislation had raised. The legislative history of the 1947 Act refers to the decision of this Court in Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 91 L. Ed. 1234, 67 S. Ct. 1026 (1947), and, in its handling of the problems presented by that case, Congress demonstrated that it knew how to cede jurisdiction to the states. Congress knew full well that its labor legislation preempts the field that the set covers in so far all commerce within the meaning of the act is concerned and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative."

Aware of the problems of preemption, and aware of the public nature of the Act it was amending and the exclusiveness of remedy thereunder, Congress very significantly did not choose to indicate either by alteration in declaration of policy or in the framework of the Act, or by any affirmative

language, that it intended to change the nature of the Act from that of one of vindication of rights in the public interest by a public agency to that of one of vindication of private rights by private individuals. On the contrary, Congress indicated very specifically that remedies under the 1947 amendments were enforceable only by the same public agency that afforded remedies under the 1935 Act, except in the sole situation where that public agency, by express agreement and under certain conditions, might seek to entrust enforcement to the states.

Subsection (a) of Section 10 of both the 1935 and 1947 Acts contains the grant of power to enforce the provisions of the unfair labor practice section of the Act; in consequence the language of that subsection is of vital impor-tance in the determination of the issues in the present case. In the 1947 Act, as under the 1935 Act, the Board alone is empowered to prevent unfair labor practices. The 1947 Act continues to emphasize, as did the 1935 Act, that this power is only for the Board to exercise: "This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, low or otherwise." (Emphasis supplied.) The 1947 Congress, however, omitted the phrase "This power shall be exclusive" which appeared in the 1935 Act. Since this omission is strongly relied upon by petitioners in support of the argument that the Congress did not intend its remedies to be exclusive, the reasons for this omission namely, to accommodate new and additional remodies not contained in the 1935 Act—are discussed in full in a latter portion of this brief. Whatever significance might otherwise have been attached to this omission as it affects the issue in this case, that significance is entirely dissipated by the new proviso clause which the 1947 Congress added to subsection 8, and it is this proviso clause which, along with subsection (1), is controlling in respect to the question of the extent to which Congress intended the states

to administer or enforce the unfair labor practice provisions of the Act,

The proviso clause undertakes to specify precisely under what circumstances and conditions the states may exercise jurisdiction to enforce the Act. The clause empowers the Board to cede jurisdiction to any state agency in any case (except cases involving four specified industries) but provides that such cession can be accomplished only by express agreement between the Board and the state and only unless the state law applicable to determination of any case thus ecded is consistent with the federal law. The language of this proviso makes clear that Congress considered and legislated directly in respect to state enforcement and carefully delineated under what conditions and circumstances the states could exercise jurisdiction. Having considered the problem and taken action thereon, it is not for the state of Pennsylvania or for this Court to add to or take away from the conditions carefully prescribed by Congress under which the states may attempt to enforce the unfair labor practice sections of the Act. The principal "expressio unis est exclusio alterius" is directly applicable here; Congress has outlined certain conditions under which states might exercise jurisdiction and no others can be permitted. As stated by the Court of Appeals for the Second Circuit in a recent decision (Rabouis v. National Labor Relations Board, 195 F. 2d 906 at 912):

"In a matter of such bitter controversy as the Taft-Hartley Act, the product of careful legislative drafting and compromise beyond which its protagonists either way could not force the main body of legislators, the courts should proceed cautiously. For it would appear that Congress has already spoken in this regard."

Subsection (b) through (i), which further deal with prevention of unfair labor practices by the Board, are identical in both the 1935 and 1947 Acts. Three new subsections (j), (k) and (l), are added to the 1947 Act. Sec-

tion 10(i) authorizes the Board in its discretion to seek injunctions against any alleged unfair labor practice. Such injunction can be applied for, however, only after issuance of a complaint. This means that a charge must first have been filed and investigated by the Board, and upon the basis of such investigation the Board determines whether to issue a complaint. In this manner it is made certain that injunctions are not inprovidently sought. An exception, however, is set forth under Section 10(1) in the case of union violations of the so-called secondary boycott provisions of the Act; namely, Sections 4, (A), (B) and (C) of Section 8(b). In those cases the Board is required mandatorily to seek preliminary injunctive relief upon the filing of charges and before the issuance of a complaint if a preliminary investigation gives reasonable cause to believe that the charge is true. Section 10(k) deals with the determination of so-called jurisdictional disputes. Thus sections (j), (k) and (l) constitute a comprehensive and detailed scheme for enforcing the unfair labor practice sections of the Act and for obtaining injunctive relief against violations. It is significant that in all cases where any injunctive relief is to be sought, careful screening by an expert tribunal is a prerequisite.

It is difficult to conceive by what process of reasoning or rule of statutory construction it can be argued that Congress was not concerned with whether this carefully thought out plan for the prevention and remedying of alleged violations of Section 8 could be avoided, and with whether the provisions for the assumption of jurisdiction by state agencies under the method provided in the provise to Section 19 (a) could be disregarded; if Congress contemplated the assumption of jurisdiction by state courts contended for in the instant case, it would hardly have taken such pains to prescribe its own remedy or the conditions under which states could exercise jurisdiction or, in any event, would have added additional language to the 10 (a) proviso clause,

thoroughly indicating such intent. Surely, the language used by Congress speaks for itself and is conclusive that the Congressionally-prescribed remedies are exclusive and that states are to act only under the circumstances set forth under the 10 (a) proviso clause.

Two other sections of the 1947 Act should be mentioned us indicative of the fact that when Congress desired states to assist in any phase of the administration or operation of the Act, it was careful expressly so to provide. Under Section 14 (b) Congress gave the states power to prohibit union-security agreements altogether. The lawmakers explained their reason for this special provision as follows (House Report No. 245, 80th Cong., 1st Sess., p. 40):

"As under the present act, the power of the Board under the amended act in the matter of unfair labor practices is exclusive. This rule has necessitated a special provision . . . to give to the States a concurrent farisdiction in respect of closed-shop and other union-security agreements."

Similarly, under Sections 202(c), 203(b) and 8(d) (3), Congress provided for the inclusion of state agencies in the mediation and conciliation of labor disputes by special language suitable to that end.

Given the statutory language and nothing more, it would seem clear that Congress has provided specific remedies for alleged violations of Section 8, which remedies are exclusive, and which would prevent state courts from issuing injunctions, preliminary or otherwise, to prevent such or similar violations upon the application of private parties.

As indicated by the Fourth Circuit in Amazon Cotton Mill Co. v. Textile Workers Union, 167 F. (2d) 183, at 186, what this Court said in respect to the Railway Labor Act in General Committee v. Missouri, K. & T. R. Co., 320 U.S. 323, is equally applicable to the Labor-Management Relations Act of 1947; we quote its language by way of summary of our position here:

"On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate." (320 U.S. at 332.)

As before stated, petitioners rely heavily upon the fact that the 1947 Act the Congress, in conferring jurisdiction upon the National Labor Relations Board under Section 10(a) to remedy unfair labor practices, omitted the phrase "This power shall be exclusive," which appeared in the similar grant of jurisdiction under Section 10(a) of the 1935 Act. Any attempt thereby to infer that state courts have jurisdiction to grant injunctive relief ignores the general structure of the Act, the careful framing of specific remedies for specific violations, and the express language in the proviso clause to Section 10(a), not appearing in the 1935 Act, under which Congress provided that jurisdiction to remelly the unfair practices can be exercised only under express agreement by the Board. These considerations, as held by the Fourth Circuit in the Amazon Cotton Mill case, 167 F. (2d) at 187, in dispozing of the contention that omission of the word "exclusive" is significant as showing an attempt to open the door to relief in the state courts. indicate that

"... a remedy in the courts not expressly given is not to be inferred; and especially is this true where Congress has worked out elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience, and has provided for the handling of unfair labor practices by an administrative agency equipped for the

It is to be remembered that use of the word "exclusive" is not controlling in determining whether the enforcement machinery created by Congress precludes other remedies. See Texas & Pacific Ry. v. Abilene Cotton Oil Co., 204 U.S. 426.

Even if there were room for argument on the question, the report of the Conference Committee conclusively indicates that the reason for the omission of the phrase describing that the Board's power of enforcement shall be "exclusive" was to make accommodation for the two new specific grants of jurisdiction contained in the 1947 amendments under Sections 10(j), (k) and (l) and Section 303, namely, that of the districts courts to afford temporary relief and of all courts to entertain suits for damages. The Conference Committee (H.R. No. 510, June 3, 1947, 80th Cong., 1st Sess. 52) stated as follows:

"The House bill omitted from section 10(a) of the existing law the language providing that the Board's power to deal with unfair labor practices should not be affected by other means of adjustment or prevention, but it retained the language of the present act which makes the Board's jurisdiction exclusive. The Senate amendment, because of its provisions authorizing temporary injunctions enjoining alleged unfair labor practices and because of its provisions making unions suable, omitted the language giving the Board exclusive jurisdiction of unfair labor practices, but retained that which provides that the Board's power shall not be affected by other means of adjustment or prevention. The conference agreement adopts the provisions of the Senate emendment by retaining the language which provides the Board's powers under section 10 shall not be affected by other means of adjustment. The conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to,

and not in lieu of, other remedies." (Emphasis supplied.)

The Fourth Circuit in the Arazon Cotton Mill case, supra, at 187, relying on this contmittee report, as well as on the "clear meaning of the statute when its language is considered in light of existing law," stated in this respect as follows:

"The change in the statute upon which reliance is placed was clearly intended, not to vest the courts with general jurisdiction over unfair labor practices, but to recognize the jurisdiction vested in the courts by section 10, subsections (j) and (l), section 208, and section 303, to which we have heretofore made reference, as well as the power in the Board, conferred by the proviso in section 10(a) to cede jurisdiction to state agencies in certain cases." See Algana Plywood NLRB.

In the light of all the foregoing, it is respectfully submitted that in the field of remedy for alleged violations of the unfair labor provisions of the Taft-Hartley Act, most certainly as clearly as in the field of regulation of peaceful strikes for higher wages, "Congress occupied this field and closed it to state regulation." International Union v. O'Brien, 339 U.S. 454, at 457.

B. The Fact That Congress Has Specified Certain Remedies Presumes That It Has Excluded All Others.

Even if the language of the 1947 amendments was not as clear as it is in indicating congressional intent to make the remedies specified in the Act exclusive, nevertheless principles of presumptive exclusion long followed by this Court would serve to preclude the granting of preliminary injunctive relief as attempted in the courts below. The rule of presumption was long ago pronounced in this Court in Houston v. Moore, 5 Wheat. 1, at 20, and has been followed by this Court in numerous cases subsequently decided. In

the Moore case Mr. Justice Washington, writing for the full court, in speaking of the concurrency of Vederal and state law, stated that if they

"... correspond in every respect, then the latter is idle and inoperative; if they differ they must, in the nature of things, oppose each other, so far as they do differ. If the one imposes a certain punishment, for a sertain offense, the presumption is, that this was deemed sufficient, and under all circumstances, the only proper one. If the other legislature imposes a different punishment, in kind or degree, I am at a loss to conceive, how they can both consist harmoniously together."

Mr. Justice Holmes classically rephrased this proposition in Charleston & Carolina R.R. v. Varudate Co., 237 U.S. 597, at 604, as follows:

"When Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition, and a State law is not to be declared a help because it attempts to go farther than Congress has seen fit to go."

See also Missouri Pacific R.R. Co. v. Porter, 273 U.S. 341, at 345.

The Labor-Management Relations Act reflected the considered judgment of Congress not only as to what substance and form regulation of certain defined labor practices should take but the extent and scope of the remedy for violations and of the forum in which relief could be sought. In it, Congress went so far as it thought right. Petitioners would have Pennsylvania add another remedy and an additional type of relief and a new forum. This it cannot do if the integrity of the federal legislative process is to remain.

A corollary to the usual role of presumption which is directly applicable to the instant case has been recognized by at least four members of this Court dissenting in CaliCongress has entered a field and made particular regulations therein and afforded particular remedies or punishment, affirmative consent by Congress to concurrent or additional remedies or punishments by state or other agencies is required. The Labor-Management Relations Act, of course, contains no such express consent and, therefore, under that doctrine the state action must fall. See 336 U.S. at 757. The Zook case involved concurrent state and federal statutes prohibiting interstate transportation without Interstate Commerce Commission permit, the state statute carrying with it a greater penalty. Although the state statute was upheld in a five-to-four decision, the Courfound that the federal Act there involved, unlike the Labor Relations Act in the present case, carried with it in its language no indication of an intent to override the state laws and that, unlike the present case, there existed no conflict in terms of application, the Court concluding that:

"In this case the factors indicating exclusion of state laws are of no consequence in the light of the small number of local regulations and the state's normal power to enforce safety and good faith requirements for the use of its own highways."

O. Considerations of Rationals and Policy Indicate Conpositional Intent to Exclude Injunctive Remotion in the State Courts.

Even though the Act were silent or ambiguous as to Congressional intent in respect to rainedy or forum, it is a fair inference, based on policy considerations and on the logic of the situation—on what Congress must have intended—that Congress excluded relief or remedy in the state courts and confined remedies to those specified in the Act. As before indicated, when the Act is considered as a whole, in all its comprehensiveness and detail, and with its exact delineation of remedies, it is certainly not reasonable to attribute an intent to Congress to open wide the use of injunctive processes by private litigants in thousands of state courts in the forty-eight states for the prevention of alleged violations of the unfair practice provisions of the Act or of parallel activities as proscribed under some state statute or common law. If "uniformity of administrative policy and disposition, expertness of judgment, and finality in determination" (Aircroff Corp. v. Birsch, 331 U.S. 752, at 767) were, as in the case of other federal administrative regulations, to be considered a destrable and, most assuredly to confer on private persons the right to seek injunctions for alleged violations in whatever court, state or federal, the could obtain service, would make that end quite unobtainable. Litigants would be prope to seek that forum which they believed was most favorably inclined to their cause. The result would be a "crasy quilt of diversity," to impute an intent to permit or tolerate such a result would indeed be "a strained and atrange way of interpreting the mind of Congress." (See Justice Frankfurter, dissenting in California v. Eook, 336 U.S. at 740.

Judge Parker, in the Amazon Cotton Mill case, 167 pr. (2d) at 190, plotured the consequence of allowing private parties to sue for injunctions in the following words:

tive process of the courts under the Ast, so also are employers. If they may havely parisdiction of the courts where they themselves have appealed to the Labor Board, they may havele parisdiction of the courts where they themselves have appealed to the Board. It where their adversaries have appealed to that Board. It would follow therefore that upon the beginning of a proceeding before either the Board or a court, the party presenting in the other tribunal. More than two hundred local tribunals of general jurisdiction would be elethed with the special jurisdiction now vested in a unified agency with nationwide jurisdiction over labor controversies; and it is not difficult to foresee the confusion that would necessarily result. Certainly the statute should

not be given an interpretation which would lead to such consequences."

Judge Parker was presumably speaking of the two hundred federal district courts; the confusion he prodicts would be compounded a thousand times were jurisdiction to enjoin unfair labor practices extended to the state courts as well.

Further, were state courts permitted jurisdiction to remedy unfair labor practices proscribed in federal Act, the National Labor Kelations Board would be reduced to a state of idle impotency. Few private litigants would better with the expert processes of the Board when they could be into a friendly state court and exists unfair labor practices. Thus the atstudy's provisions of Sections 16(1) and 16(1), which provide the Board with authority to enjoin unfair practices, would be reduced to multities. Congress could not have intended such carefully studied statutory provisions to lie dormant.

Dress if we were to rely on only what Congress must have intended and disregard the statutory language or the rule of presumption, the inevitable conducton is that the only way in which injunctive relief can be obtained is in the manuar specifically provided in the Act; otherwise, enforcement of the Act would be subject to the croding process of conflicting judicial review at thousands of local state levels.

D. The Logislative Bluker of the 2017 Act Discloses a Divise Sixus is For Also All Regiselles Other Than Those Provided for a See Act, and Honeshoodly to Forestone Ton Person Rolled in the World Godine

The conclusion that Congress intended to foreclose all remedies public, private, state or national, other than those set forth in the 1947 amendments, which has been heretofore gathered from the language of the Act itself, from allowable legal presumption, and from fair inference, is strongly supported by the legislative history of the Act and,

in particular, by the history of those sections providing for relief from the alleged violations of the unfair labor practice provisions of the Act. This history shows that Congress expressly considered the problem of scope of remedy, of whether the exclusive grant of jurisdiction to the National Labor Relations Board contained in the 1935 Act should be continued and, in particular, of whether temporary relief against violations abould be obtainable in any court of competent jurisdiction so as to provide a remedy for whatever irreparable injury might be sustained if the Board processes should occasion delay. The legislative history shows clearly that Congress specifically pendered the problem of private relief, weighed the possibility of potential abuses of the injunctive process against the possibility of potential damages to private individuals suffering irreparable injuries because of possible delays, and decided in favor of "procedures under the National Labor Relations Act." (93 Cong. Rec. 5041.) Because of the clarity of expressions of Congressional opinion on this subject, and because they conclusively dispose of the principal argument of those advocating resort to tribunals other than those specified under the Act itself for the purpose of obtaining relief against alleged irra ... ble injury, the most pertinent portions of the debates and committee reports on this particular subject are set forth below in full.

It was Senator Morse who proposed, under Section 10(j), that injunctive relief for alleged violations be obtainable only through the Board. Commenting on his proposal, Senator Morse stated as follows (93 Cong. Rec. 1912):

"My proposal would in no way impair the legitimate rights of labor under the Norris-LaGuardia Act and the Clayton Act [15 U.S.C.A. §12, et seq.], since I do not propose that employers be allowed to obtain injunctions against labor or that unions and their members be subjected to the drastic civil and criminal penalties that could be applied in days gone by."

Senate Report No. 105 on S. 1126, 80th Cong., 1st Sess., p. 8, explained Sections 10(j) and 10(l) as follows:

"After a careful consideration of the evidence and proposals before us, the committee has concluded that five specific practices by labor organizations and their agents, affecting commerce, should be defined as unfair labor practices. Because of the nature of certain of these practices, especially jurisdictional disputes, and secondary boycotts and strikes for specifically defined objectives, the committee is convinced that additional procedures must be made available under the National Labor Relations. Labor Relations det in order adéquately to protect the public welfare which is inextricably involved in

labor disputes.
"Time is usually of the essence in these matters, and Time is usually of the essence in these matters, and consequently the relatively slow procedure of Board hearing and order, followed many months later by an enforcing decree of the circuit court of appeals, falls short of achieving the desired objectives—the prompt elimination of the obstructions to the free flow of commorce and encouragement of the practice and procedure of free and private collective bargaining. Hence we have pravided that the Board, acting in the public interest and not in practices of purely private rights, may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such relief in the case of strikes and boycotta defined as unfair labor practices." (Emphasis supplied.)

Senators Taft, Ball, Donnell and Jenner issued a supplemental report setting forth objections to the provisions of the bill giving the Board exclusive power to obtain injunctive relief for alleged violations of the unfair practice sections of the Act. The supplemental report (Senate Rep. No. 105 on S. 1126, Supplemental Views, 1 Legislative History of LMRA, 1947, Gov. Printing Office, 1948, p. 460) states an follows:

"An amendment reinserting in the bill a section making secondary boycotts and jurisdictional strikes un-lawful and providing for direct suits in the courts by

any injused party. The convertices bill admits that and beycotte and strikes are improper, but it only pro-peres to make them unfair labor practices. This means that appeal arest be made. . . to the National Labor Relations Noard. The bill does provide that, on peti-tion of the NUMB regional attorney, the Board may obtain a temporary injunction from a court while it is condusting a hearing on the question whether the strike is an unfair labor practice or not. If it finds that it is, it then may issue a cease and desist order against such a strike and later ask to have this enforced by the court. In our opinion this is a weak and uncertain remedy for those injured by clearly Hegal strikes. It depends upon the decision of the National Labor Rela-tions Board as to whether any action shall be taken. and the conduct of the proceedings will be entirely in the hands of the NLRB attorneys instead of attorneys of the officed party. The free in such cases are easily ascertainable by any court and do not require the expertness supposed to be one of the virtues of the administrative law procedure. In addition to that, the best estimate of the time lag between the filips of charges with the NLRB and its obtaining of a temporary injunction is not less than two weeks to a month. ". There will only be a satisfactory remedy if he can go to his local court and obtain an injunction, first temporary and then permanent, against interference of his kind ?

In line with these objections, Senator Ball then proposed an amendment which was designed to permit employers to obtain injunctions in district courts against jurisdictional strikes and accordary boycotts. The Ball amendment read as follows (93 Cong. Rec. 4887):

"(b) The district courts of the United States shall have jurisdiction in proceedings instituted by or on behalf of the United States, or by any party suffering loss or damage or threatened with loss or damage by reason of any violation of subsection (a), to prevent and restrain violations of such subsection. It shall be the duty of the several district attorneys of the United

States, in their respective districts, under the direction of the Attorney General, to institute proceedings to prevent and restrain violations of such subsection." (Emphasis supplied.)

Senator H. Alexander Smith, of New Jersey, attached a supplemental statement at the end of the committee report, expressing his opposition to this amendment (Senate Report No. 105 on S. 1127, Supplemental Views) as follows:

"I am opposed to this amendment (Amendment four proposed by the other Senators). While I am in entire accord that there can be no defense of secondary boycotte and jurisdictional strikes, I feel that the reported bill treating these matters as unfair labor practices is the preferable way to deal with them—putting the responsibility on the National Labor Relations Board. Furthermore, I do not favor the opening up of the Norris-LaGuardia Anti-Injunction Act except as petition of the Government. By treating these evils as unfair labor practices, the use of the injunctics is given to the National Labor Relations Everd and is not open to abuse by individual employers. At least we should experiment with this procedure before adopting the more severe remedies."

-Senator Ives of New York expressed his opposition to this amendment as follows (93 Cong. Rec. 5041):

"It has been pointed out that possibly the unfair labor practice procedure might not be so effective as the direct injunction obtained by the employer. To some extent perhaps, it would not be. Perhaps there would not be the immediate action obtainable by injunction, but by and large, the entire appeared procedure is intercled to deal with the National Labor Relations Act. The provisions with respect to jurisdictional disputes and with respect to secondary beyonts, which are met by a statutory denial, deal fundamentally with the National Labor Relations Act. In effect, such boycotts and strikes would constitute violation of that act, if indeed they would not actually violate other laws.

The remedy should be found in procedures under the National Labor Relations Act. So I say that if there should be a slight delay—and I do not think there would be, once the system is established—but if there should be a slight delay, the right approach is through the provisions of the committee bill without opening the door to abuses which formerly existed and which resulted in the passage of the Norris-LaGuardia Act. I have stated my second reason for opposing the amendment offered by the Senator from Minnesota."

Senator Morse voiced his objections as follows (93 Cong. Rec. 4841):

"It has been my consistent endeavor while this legislation has been under discussion to vest determination of labor problems so far as it is humanly possible to do so in a single organization that is expert in labor prob-I assume that if the debates on this bill have served no other purpose they have demonstrated to all Members of the Senate the complexity of this field. Labor problems are complex, as complex, indeed, as our entire pocial structure, since the great mass of our people are workers. It is a field which has been growme ever more complex as our society has come to depend upon the output of large industrial enterprises. Nor will these problems be simplified if the legislation we have here proposed becomes law. Close day-to-day contact with these problems is necessary if able persons are to keep themselves even reasonably informed.

"I am confident, despite the high regard in which I bold the district judges of the United States, that they have neither the background, the desire, or the time, to become experts in these matters. It is one thing to grant to the district courts, upon application of the Board, an interim power to maintain the state quo pending resolution of the problem by the body which we have selected as the expert body to handle such problems. It is quite a different thing to do what this bill proposes, namely, to throw these matters for final decision into the laps of the approximately 250 district judges of the United States, some of whom may have

some knowledge of the field, but all of whom can cer-

tainly not pretend to the experts. . .

". I cannot be convinced that it is sound legislation to disperse the authority over these problems, to draw into the orbit of their handling, a host of district attorneys and Federal judges without competence in the field or, by splitting up authority among all the district attorneys and district judges of the land, to make impossible the development of a uniform body of precedent and decisions, harmoniously integrated with each other over the entire economy."

In the course of debate over the Ball amendment, Senator Ball answered, "Yes, of course," to Senator Ellender's question whether or not it was true in respect to the bill itself, as distinguished from Ball's amendment, that "all of the unfair labor practices covered by the bill against management or labor are processed through the Board." (93 Cong. Rec. 5040.) The Ball amendment was put to vote and defeated 63-28 (93 Cong. Rec. 4847).

Apparently as a compromise, Senator Taft then introduced an amendment authorizing suits for damages caused by jurisdictional strikes and secondary boycotts (93 Cong. Rec. 4843), which was enacted as Section 303 of the Act (93 Cong. Rec. 4874). In answer to a clarification requested by Senator Morse as to whether the Taft proposal might give rise to the granting of a junctive relief in that type of cases, Senator Taft replied (93 Cong. Rec. 5074):

"Let me say in reply to the Senator or any one else who makes the same argument, that that is not the intention of the author of the amendment. It is not his belief as to the effect of it. It is not the advice of counsel to the committee. Under those circumstances I do not believe that any court would construe the amendment along the lines suggested by the Senator from Oregon."

What is significant about the foregoing legislative history is not only the clear indication of intent to limit rem-

edies to those specifically provided for in the Act, but also the fact that none of the legislators ever even so much as assumed that the express provisions affording remedies set forth in the Act would be anything but exclusive. As stated by Judge Parker in the Amazon Cotton Mill Co. case, 167 Fed. (2d) at 189, in commenting upon this legislative history:

"It is hardly thinkable that, if the effect of the Labor Management Relations Act was to make a fundamental change in the jurisdiction to deal with unfair labor practices, this important fact would not have dawned upon some member of the House or the Senate and have been referred to in the course of the lengthy debate of a measure that was passed over a Presidential veto. That no such suggestion was made gives ample support to the interpretation which, as we have already indicated, we should place upon the text of the act if the history of its passage and the Congressional debates were not available to us."

That Court further stated in respect to this history, at p. 188:

"There is nothing in the history of the act, the reports of committees or the debates in Congress which even vaguely supports the contention that its effect was to vest jurisdiction in the District Courts to grant relief against unfair labor practices. Everything said by anyone remotely bearing on the matter is to the contrary."

It would serve no purpose to rehearse before this Court the justifications and policy considerations which support the determination of Congress, as a means of eliminating any possibility of a revival of the abuses of the injunctive process which gave rise to the Norris-LaGuardia Act (see 93 Cong. Rec. 4834-4847, 4864, 4868, 6446, 4132-4133, S. Rep. No. 105, 80th Cong., 1st Sess., 56), to subject injunctive relief to a screening process by a responsible and expert fed-

eral tribunal, even at the risk of subjecting employers to whatever irreparable injury might be occasioned by the necessity to resort exclusively to the procedures provided under the Act. Such considerations, like those advanced by the Alabama and Oregon courts as arguments for permitting injunctive relief by private individuals to protect private property rights, are best addressed to the Congress which alone has the power to make the determination of an appropriate remedy for enforcement of its own regulations in the field of interstate commerce. Cf. Lincoln Federal Labor Union No. 19129, et al. v. Northwestern Iron and Metal Co., et al., 335 U.S. 525.

CONCLUSION

Whatever the test or method of approach utilized, it is clear that Congress, in the 1947 Amendments to the Wagner Act, intended to continue to confine remedies for alleged violations of the Act, whether occurring under state or federal law, to those specified in the Act, as amended, and has intended to preclude the states from exercising any jurisdiction to enforce the provisions of the Act, or similar provisions of state law except under certain conditions and circumstances not present in this case. Congress having preempted the field, the courts of Pennsylvania are without jurisdiction in the premises. Accordingly, it is respectfully requested that the decision of the Supreme Court of Pennsylvania herein be upheld.

Respectfully submitted,

J. Albert Woll, Herbert S. Thatcher, James A. Glenn, 736 Bowen Building, Washington 5, D. C.

Counsel for American Federation of Labor

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Supreme Court of the United States

October Term 1968

No. 16

CONTAINS A CONTRACT GARAGE A TRACTOR OF THE CONTRACT OF THE CO

Petitioners

TEAMSTERS, CHAUFFEURS and HELPERS, LOCAL UNION No. 778 (A.P.L.), et al

BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

INTRODUCTION

Industrial Organizations with the consent of the parties, as provided for in Rule 27 of the Rules of this Court. It is submitted by the CIO because of the importance of the inste involved to all labor organizations, which would be subjected to the cumulative and conflicting imposition of the sanctions provided for by both federal and state labor relations laws if the decision below were reversed.

STATUTORY PROVISIONS INVOLVED

The pertinent statutory provisions involved here are set out, in Appendix A to this brief, pages 23-27.

STATEMENT

The company (Central Storage and Transfer Company) is engaged in the trucking business and its operations affect interstate commerce. The union (Teamsters Local Union No. 776) represented a few, but not a majority, of the company's employees. On June 7, 1949, the union began peaceful picketing of the employer's place of business.

The purpose of the picketing, according to the union, was "advertising" to persuade the employees to join the union. The union neither requested the employees to compel its present employees to join the union, nor did it demand that those employees be discharged in favor of union members (Finding 27, R.177a). Indeed, as found by the trial court, the union's policy with respect to the compulsion of union membership was to insert in its contracts with employers a union shop provision pursuant to a certificate of authority issued by the National Labor Relations Board (Finding 33, R.178a). Under the law in effect at that time, such a certificate could be obtained with respect to any bargaining unit only after a majority of the employees in that unit had voted, in a secret ballot election, to authorize a union shop.

The picketing caused some financial loss to the company and it instituted suit to enjoin it, alleging that it constituted a course of conduct intended or calculated to coerce the company to require its employees to become members of the union.

The trial court after hearing evidence found the above facts and concluded that the picketing went "beyond the field of persuasion for organizational purposes into the field of intimidation or business compulsion deliberately designed to overce Central, by causing it substantial business losses, to compel or require its employees to become members of the union" (Finding 40, R.179a). It issued both preliminary (R.102a) and final (R.202a, 228a) injunctions. On appeal, the Supreme

^{*§§ 8(}a)(3) and 9(e)(1) of the National Labor Relations Act, as amended in 1947, 61 Stat. 141, 144, 29 U.S.C. (Supp. I) 158(a)(3) and 159(e)(1). In 1951, after the trial of this case, § 9(e)(1), which provided for the union shop authorization election, was deleted from the Act and § 8(a)(3) correspondingly amended. 65 Stat. 601. 29 U.S.C. (Supp. V) 158(a)(3) and 159(e)(1).

Court of Pennsylvania reversed and ordered that the complaint be dismissed. The company petitioned for certiorari and the writ was granted.

ABGULENT

1

THE DECISION OF THE SUPREME COURT OF PENNSYL-VANIA DOES NOT REST ON AN ASSUMPTION THAT THE UNION COMMITTED AN UNFAIR LABOR PRACTICE

The basic facts in this case are extremely simple, and there was no controversy in the Pennsylvania courts as to what actually happened. The exact nature of the legal issue presented for decision in this Court, however, is somewhat com-plicated by the peculiar frame of reference established by the Pennsylvania statutes and decisions, the sometimes contradictory positions taken by the parties at various stages of the litigation and the failure of the Supreme Court of Pennsylvania to base its decision on the facts, as found at the trial. The result is that it would appear, at least from petitioner's brief, and perhaps from the others, that the problem of federal-state relationship to be decided by this Court arises from the commission by the union of acts which constitute an unfair labor practice under the National Labor Relations Act, as amended. The entire brief of the petitioner in this Court is based on the assumption that the Supreme Court of Pennsylvania decided that the union violated Section 8(b) of the federal Act and that, therefore, the state courts could not also enjoin the union's action as violative of the state's labor relations policy.

This assumption is false. Although the question of whether the union had committed an unfair labor practice under the Act was litigated, it was not decided by the Pennsylvania Supreme Court. Nor, we believe, is resolution of the question required in this Court. The Pennsylvania Supreme Court decided this case without either deciding that a federal unfair labor practice in fact occurred, or assuming any decision on that question from the pleadings, and this Court should do the

same. This, we believe, can be shown by examining carefully the Pennsylvania law, the contentions of the parties below, and the decision of the Supreme Court of Pennsylvania.

A. The Legal Premovers

1. The Original Federal and State Legislation. The National Labor Relations Act was enacted in 1935. In 1937, Permayivania enacted its Labor Relations Act. Act of June 1, 1937, P.L. 1168, No. 294, 43 U.S. §§ 211.1 - 211.13. So far as relevant here, the two were identical.

Section 8(3) of the federal Act provided that it should be an unfair labor practice for an employer "by discrimination ir regard to hire or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization . . " 29 U.S.C. [158(3). Excepted from this provision were union shop or closed shop-agreements executed by an employer with a labor organization representative of its employees.

Section 6(1)(c) of the Pennsylvania Labor Relations Act, 43 P.S. 1 211.6(1)(c), was an exact replica of Section 8(3) of the National Labor Relations Act. Under both statutes, it would be unlawful for an employer to require his employees to join a union, except pursuant to a union shop agreement negotiated with a union representative of his employees.

The Pennsylvania law imitated the federal law in a further respect. In 1937, Pennsylvania also enacted its "Labor Anti-Injunction Act". Act of June 2, 1937, P.L. 1198, 43 P.S. §§ 206a-206q. This act was modeled after the Norris-LaGuardia Act which had been enacted earlier by the federal government.

From the terms of the Anti-Injunction Act, as well as from the terms of Section 8(a) of the Pennsylvania Labor Relations Act (43 P.S. § 211.8(a)), which made the jurisdiction of the Pennsylvania Labor Relations Board "exclusive", it was clear that if a union were to attempt, by peaceful picketing, to coerce an employer to compel his employees to become members of the union, no injunction against such activity could be obtained from the Pennsylvania courts. The virtually identical provisions of the Federal Act accomplished, of course, the identical result. Conduct of the kind alleged to be involved in

this case, therefore, was not reachable by either federal or state authority.2

2. The Pennsylvania Amendments (1939). On June 9, 1939, Pennsylvania amended both its Labor Relations Act and its Anti-Injunction Act. Act of June 9, 1939, P.L. 293; Act of June 9, 1939, P.L. 302. The amendments to the Labor Relations Act established a series of union unfair labor practices in much the same way is was ultimately done in 1947 in the federal Act. They did not, however, make it an unfair labor practice for a labor organization to cause an employer to compel his employees to become members of a union in violation of Section 6(1)(c) of the Pennsylvania Act. Such activity by a labor organization was dealt with, instead, by amendment of the Anti-Injunction Act.

Act. The amendment cited by the Supreme Court of Pennsylvania in its decision in this case removed from the scope of the Anti-Injunction Act cases in which a labor organization "engages in a course of conduct intended or calculated to coerce an employer to commit a violation of the Pennsylvania Labor Relations Act of 1937 or the National Labor Relations Act of 1935." 43 P.S. § 206d(c), as added by the Act of June 9, 1939, P.L. 302, §1. An additional amendment (43 P.S. §206d (b)) provided that where a majority of employees had not joined a labor organization, or where two or more labor organizations were competing for membership of the employees, the Anti-Injunction Act should not apply if a labor organiza-

^{&#}x27;The Pennsylvania Labor Relations Act, in its original form, was expressly limited to employer-employee relationships to which the federal Act was inapplicable. Section 3(c) of the 1937 Act excluded from the definition of "employer" any person subject to the provisions of the National Labor Relations Act. See Abbott's Dairies Case, 341 Pa. 145, 19 A. 2d 128 (1941).

The Pennsylvania Legislature reacted to the decision of the Pennsylvania Supreme Court in Abbott's Dairies Case by amending the Pennsylvania Act to omit this exclusion. Act of May 27, 1943, P.L. 741, Section 1. The Supreme Court of the State, however, refused to permit the Pennsylvania Board to exercise the jurisdiction which was thus enlarged, holding that, "wherever the employer-employee relationship is on over which * * Congress has acted, State power is suspended and cannot constitutionally be exercised." Pittsburgh Railway Employees Case, 357 Pa. 379, 386, 54 A. 2d 891 (1947); Pennsylvania Labor Relations Board v. Frank, 362 Pa. 537, 67 A. 2d 78 (1949).

tion engaged in a course of conduct intended or calculated to course the employer to compel his employees to become members of that organization.

As applicable here, both of these amendments accomplished the same result. It was, and still is, an unfair labor practice for an employer to compel his employees to join a labor organization except pursuant to a proper union shop contract. Action by a union to coerce an employer to take the action described in 43 P.S. 206d(b) would necessarily, therefore, be action which would coerce the employer to commit an unfair labor practice, in violation of both the federal and state Acts." The effect of both smendments then, was to bring within the purview of the courts, rather than the Pennsylvania Labor Relations Board, activity by a union which would cause an employer to violate the Pennsylvania Labor Relations Act or the National Labor Relations Act. If the union was successful in causing such employer action, the employer could be reached only by a Board proceeding, either federal or state, The union's conduct, however, was made subject to the injunctive jurisdiction of the state courts. And this grant of jurisdiction (or, more accurately, relaxation of a jurisdictional bar) was treated by the Pennsylvania Courts as creating a substantive cause of action. See Tankin v. Hotel and Restaurant Workers, 36 D. & C. 537 (Ct. of Common Pleas, 1939) cited with approval in De Wilde v. Scranton Bldg. Trades, 343 Pa. 224, 229 (1941); Wilbank v. Bartenders Union, 360 Pa. 48, 60 A. 2d 21 (1948) cert. den., 336 U.S. 945.

3. The Federal Amendments (1947). The amendments to the National Labor Relations Act, contained in the Labor Management Relations Act, 1947, were directed, in part, to the same problem covered by the 1939 amendments to the Pennsylvania statutes. The Pennsylvania pattern, however, was not adopted. Union action to comper an employer to violate Section 3(a)(3) of the federal Act was not made initially enjoinable in the courts, as in Pennsylvania, but an unfair labor practice under Section 8(b)(2), which provided

Prior to 1943, only employers not subject to the National Labor Relations Act could violate the Pennsylvania Labor Relations Act. See footnote 2, page 5, supra.

that it should be an unfair labor practice for a union "to cause or attempt to cause an employer to discriminate against an employee in violation of Sub-section (a) (3) . . . ".

Thus, under the federal Act and the Pennsylvania Act, it is an unfair labor practice for an employer to require his employees to join a union (except pursuant to a proper union shop contract). Under the Pennsylvania law action by a union "intended or calculated to coerce an employer" to commit such an unfair labor practice is enjoinable in the courts. Under the federal Act, action by a union "to cause or attempt to cause an employer" to commit the identical unfair labor practice is itself an unfair labor practice.

B. The Contentions of the Parties Before the Pennsylvania. Courts

Essential to the company's case in the Pennsylvania courts, both as a jurisdictional matter and as a matter of substance, was the claim that the picketing here was "intended or calculated to coerce an employer" to require his employees to join the union. Since there was no dispute as to the actual facts in the case, there were only two basic questions before the trial court. First, could it be said that a union, which made no request at all of an employer, and which, as a matter of policy, never required the employees of any employer to join the union until a majority of them had affirmatively authorized such action by a secret ballot election conducted hby the N.L.R.B., nevertheless engaged in a course of conduct intended or calculated to coerce an employer to require his employees to become members of the union because it engaged in simple organizational picketing urging the employees to join the union? Second, if such a conclusion could be drawn on the undisputed facts, would the state courts jurisdiction be ousted because the picketing also violated Section 8(8) (2) of the federal Act as action "to cause or attempt to cause an employer" to require his employees to join the union?

Both of these issues were explicitly litigated and explicitly decided by the trial court. The trial court found, first, that the picketing was intended or calculated to coerce the employer to require his employees to join the union. Based on this first

finding it concluded: (1) the Pennsylvania Anti-Injunction Act was not applicable, (2) that a substantive case had been made out by the employer that the picketing was not constitutionally protected free speech, and (3) that no rights protected by Section 7 of the National Labor Relations Act would be infringed by an injunction. On the second major issue it explicitly held that the conduct of the union nevertheless did not constitute a violation of section 8(b) of the federal Act.

In the argument before the Pennsylvania Supreme Court the issues remained drawn in exactly the same fashion as they had been drawn in the trial court. The company argued that the picketing was intended or calculated to coerce it to require the employees to become members of the union, but that, nevertheless, no violation of Section 8(b) of the federal Act was involved. The union argued first, that the finding of the trial court as to the intention of the picketing was unsupported by the evidence, and, second, that if the finding was correct, there was a violation of Section 8(b) of the federal Act.

The Supreme Court of Pennsylvania reversed the decision of the trial court. It did so, however, on reasoning which touched neither of the major contentions of the parties.

Although the case was before it on appeal from a final injunction after trial of the facts, the Supreme Court appeared to treat the case as if it arose on demurrer or motion to dismiss. It did not, therefore, determine whether the trial court's findings were supported by the evidence. Nor, on the other hand, did it decide whether, if the facts alleged in the complaint were assumed to be true, there was a violation of Section 8(b) of the federal Act. The court, in effect, refused to decide either of the questions argued by the parties

How then, did the Supreme Court of Pennsylvania dispose of the case? If the court's opinion is read carefully in light of the Pennsylvania statutory background, its reasoning can be paraphrased as follows: If the company required its employees to become members of the union, the company would violate Section 8(a)(3) of the amended National Labor Relations Act and the practically identical Section 8(c) of the Pennsylvania Labor Relations Act. Action by a labor organization to cause

See Point II, below, and appendix B.

an employer to commit such an unfair labor practice is an un-Stair labor practice under Section 8(b) (2) of the federal Act; it is enjoinable by our cours under the 1939 amendments of the Pennsylvania Anti-Injunction Act. We consider the Pennsylvania law as having identically the same scope as the federal law. The only difference between them is that under the federal Act the remedy is in an unfair labor practice procedure, while under the Pennsylvania law the remedy is by injunction. Therefore, the picketing here either violated both Acts, or violated neither. If it violated neither Act, of course, there was no cause of action and the picketing was constitutionally protected (citing Carnegie Illinois Steel Corp. v. United Steelworkers of America, 353 Pa./420). If the picketing violated both Acts, then the question of whether the federal Act preempts the field is presented. We decide that Congress intended to prevent states from enforcing prohibitions identical to those contained in the federal Act. Therefore we decide that the trial court had no jurisdiction even to consider the complaint since, even if the state law were violated, the court would have no jurisdiction to issue an injunction.

It is important to note that the Pennsylvania Court did not look at the facts either as alleged or proven. It did not say that a violation of both the state and the federal acts had, in fact, occurred, or assume that one had occurred. It said only that the state law was identical with the federal law, that there was, therefore, either a violation of both or a violation of neither, and that, in either eventuality, the trial court would have no jurisdiction.

C. The Issue Presented to This Court

In this state of affairs, what is the precise issue presented to this court? It is clear what the issue is not. It is not whether the conduct alleged in the complaint or proved at the trial constituted an unfair labor practice under the National Labor Relations Act, as amended. Nor is the issue, in our view, whether the acts complained of were protected concerted activity under Section 7 of the Act.

One of the issues in the case, in the Supreme Court of Pennsylvania, concerned the substantive law of Pennsylvania. The

Supreme Court of Pennsylvania had to decide whether, as a matter of state law, the substantive law of Pennsylvania, with respect to organizational picketing, was broader, narrower, or the same as the federal law. It could have decided that question only insofar as it was presented by the particular facts involved in the case. But it chose not to do so. It ignored the facts developed at the trial and, looking at the question more, broadly, held simply that the Pennsylvania statutes should be construed as having identically the same scope as the federal statute. Upon this determination it predicated its ultimate bolding in the case.

Whether the Pennsylvania Supreme Court was right in its decision to so fashion its determination as to the scope of the state law against picketing is, of course, not open to this Court. This court must accept the interpretation of Pennsylvania law given by the Supreme Court of the State.

What is left, then, for this Court to decide?

In our view, the holding of the Pennsylvania Supreme Court leaves only for decision by this Court the narrow question of whether state law making it unlawful to coerce an employer to violate the National Labor Relations Act, or the identical provisions of the Pennsylvania Labor Relations Act, can be enforced with respect to an employer subject to the federal law.

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NO UNFAIR LABOR PRACTICE OCCURRED HERE

The answer to the issue which we have described in Point I above is governed, we concede, by the same considerations as the answer to the issue posed by the petitioner. Argument by the parties, and others, which is made on the assumption that an unfair labor practice, in violation of Section 8(b) of the federal Act, actually occurred are not wide of the mark. Our purpose in making the distinction set forth in Point I is not to undercut the arguments of the parties but, rather, to avoid any possibility that the Court will be led inadvertently to label the union's conduct here as an unfair labor practice, thus making what we believe would be an erroneous, but necessarily governing, interpretation of Section 8(b) of the federal Act. In this Point, we will set forth our reasons

for believing that, if the Court should examine the facts, it would have to conclude that there was no unfair labor practice.

Before going into the discussion, we think it worth while to note that the company has completely reversed its position with respect to this issue. As we have stated above, the company urged strongly in the Pennsylvania Courts that the conduct of the union which it complained of did not constitute an unfair labor practice under the federal act. It succeeded in persuading the trial court of the correctness of this contention, and the trial court specifically held (R.185a-187a, Conclusion of Law No. 8, R.201a) that no violation of Section 8(b) of the National Labor Relations Act was involved.

On appeal to the Pennsylvania Supreme Court, the Company continued to take the same position. So that there may be no mistake about the matter, we reprint, as Appendix B to this brief, the portion of the Company's brief before the Pennsylvania Supreme Court with respect to this question.

In this Court, the company has completely reversed its field. It now argues, on page 84 of its brief, that

Section 8(b) (2) makes it an unfair labor practice for a labor organization to attempt to cause an employer to discriminate against an employee in violation of Section 8(a) (3) to encourage or discourage membership in any labor organization. While the trial court, under thermarrow decisions of the National Labor Relations Board (R.186) such as United Brotherhood of Carpenters and Joiners of America, etc. (Wallsworth Building Co., Inc.) 81 N.L.R.B. 802, had held that the picketing was not outlined by the Labor Management Relations Act; the decision of the Supreme Court of Pennsylvania that Section 8(b) (2) does apply to this picketing (R. 202) is sustained by the more recent progress in the decisions of the National Labor Relations Board toward the original congressional intention. Denver Building Trade and Construction Trades Council, (Henry Shore), 90 N.L.R.B. 1768, 1769-1770, Sub Grade Engineering Company, 93 N.L.R.B. 406, 407-406, and Appendix B, infra.

One of the "more recent" decisions of the National Labor Relations Board, which is said to have changed its position since the trial of this case, was, in fact, discussed by the company itself before the Pennsylvania Supreme Court. Both of them were, in fact, decided before final adjudication in the trial court, and neither of them have anything to do with the issue here.

We do not pretend to be able to understand the motivation behind the Company's shift of position, particularly since the shift appears to render its position on the pre-emption issue substantially more difficult to sustain. The fact that the company now concedes that Section 8(b) of the federal Act applies to the union's conduct here should not, however, persuade this Court to make any such assumption.

Before the trial court the union took the position that the only purpose of this picketing here was to persuade the employees of the company to join the union. The trial court found it difficult to believe this. It said that the picketing in fact persuaded no employees, but had the inevitable effect of putting economic pressure upon the employer. It noted that the union did not attempt any personal solicitation of the employees. The court inferred, therefore, that the union had an ulterior motive, that it intended in some manner, by putting pressure upon the employer, ultimately to secure the member-

In the Wadsworth case, 83 N.L.R.B. 802, the issue was whether Section 8(c) of the Act—the so-called free speech provision—modified Section 8(b)(4)(A)—the secondary boycott provision—so as to exclude peaceful picketing from the ban on secondary boycotts. The Board held, by a 3-2 vote, that Section 8(c) did not insulate such picketing from Section 8(b)(4)(A). The opinions of the Board members indicated, however, that 8(c) would have the effect of removing peaceful picketing, not accompanied by threat of reprisal or promise of benefit, from the scope of Section 8(b)(2). (See the Intermediate Report of the Trial Examiner in Densor Building Trade & Construction Trades Council 90 N.L.R.B. 1768, at pp. 1781-1782), in the Densor Building Trade case, decided in August, 1950, the Board reversed its prior suggestion and held that peaceful picketing could violate Section 8(b)(2). Sub-Grade Engineering Company, 93 N.L.R.B. 106, deals with the proof necessary to show that a union in fact "caused" discriminatory discharges which the employer had committed.

It is hard to see how the Sub-Grade case can even be argued to be relevant. The earlier two cases would be relevant if it were first assumed that the object of the union here was to obtain a closed shop contract or a union shop contract not complying with Section 8(a)(3). A second question then would be whether peaceful picketing constituted an "attempt to cause" such a violation. But it is the first question of course, which is the one in issue here. The Trial Examiner's report in the Denver Building Trades Case is particularly clear in distinguishing the two different issues, 90 N.L.R.B. 1768, at pp. 1780-1781.

ship of its employees in the union. On this basis, it issued its /

Until the Supreme Court of Pennsylvania issued its decision in this case it might, perhaps, have been assumed that the law of Pennsylvania was that picketing for such a purpose was unlawful without regard to the specific demand which the union made upon the employer. Such, however, is not the federal law. Section 8(b) (2) of the federal Act makes it an unfair labor practice "to cause or attempt to cause an employer to discriminate against an employee in violation of Subsection (a) (3)". A violation of this Section must involve more than a generalized purpose somehow to obtain an employer's assistance in getting his employees into the union.

This is shown by a whole series of Labor Board cases, the most recent of which is United Mine Workers of America (M. F. Fetterolf Coal Co.) 103 N.L.R.B. No. 134, 32 LIRRM 1028 (April 6, 1953). In the Fetterolf case the union representatives picketed a mine after stating to the superintendent that "they were going to picket all non-union mines in the area until the operators signed agreements with the union" (Trial Examiner's Report, p. 17). The picketing was conducted by about 200 or 300 pickets who threatened the employees and engaged in several acts of intimidation and violence. A complaint was issued charging that the union had violated both Section 8(b) (1) (A) and Section 8(b) (2) of the Act.

The Trial Examiner held that a violation of Section 8(b) (1) (A) of the Act had been proven by virtue of the restraint and coercion directed against the employees. He concluded, however, that no violation of Section 8(b) (2) had been shown, since the union had not specifically demanded an illegal security provision and it was not shown that obtaining such a provision was its clear objective. Cf. National Maritime Union of America (The Texas Company) 18, 191, R.B. 971. The Board affirmed the ruling of the Irrial Examiner, dismissing the complaint insofar as it charged a violation of Section 8(b) (2).

In an earlier case Lumber and Sawmill Workers' Union (Santa Anna Lumber Co.) 87 N.L.R.B. 937, the Board had made clear that, in its view, a violation of Section 8(b) (2)

would be shown only where the union insisted on the inclusion of a clause in a contract with an employer which would violate Section 8(a)(3), and where the clear objective of the union's activity was to compel the company to submit to such a demand.

If we disbelieve, as the trial court disbelieved the union's testimony as to the purpose of the picketing, it by no means follows that the union's objective was to compet the employer to sign a contract which would violate the provisions of Section S(a)(S). The union could have been picketing merely to obtain recognition by the employer. Perhaps if wanted the employer to use the freedom of expression guaranteed to him by Section 8(c) of the Act to persuade his employees to join the Union, Such persuasion, if unaccompanied by threats of reprisal or promises of benefit, would not constitute an unfair labor practice. Heists Mfg. Co., 103 N.L.R.B. No. 99, 31 LRRM 1594; N.L.R.B. v. Corning Glass Works, 204 F. 20 422 (C.A. 1, 1953). If the Union did want the employer to sign a contract requiring union membership, its demand may very well have been only for the type of union shop arrangement permitted at that time by Section 8(a) (3) of the Act, viz: a requirement that all employees join the union within 30 days, subject to approval of the contract by a secret ballot election among the employees in an election conducted under Section 9(e)(1) of the Act.

There is absolutely nothing in the testimony in this case which would indicate that the union's objective was not only a union shop contract with the employer, but, in addition, a union shop contract which would violate the provisions of Section 8(a)(3). Indeed, the specific finding of the trial court that the union's policy was to conform its union shop provisions with the requirements of Section 8(a)(3) of the Act prohibits any inference of a contrary purpose in this case.

If anything can be inferred from the union's course of conduct in this case, the most that can be said was that the union was a minority union picketing an employer for recognition. It is crystal clear that such picketing itself does not constitute a violation of Section 8(b) of the Act. This is shown most clearly by Section 8(b) (4) of the Act. Section 8(b) (4) does

Specifically, sub-section (B) of Section 8(b) (4) makes picketing unlawful if its purpose is to require an employer other
than the one picketed to bargain with a union not certified
by the National Labor Relations Board. Sub-section C of Section 8(b)(4) makes picketing unlawful if its purpose is to require the employer who is picketed to bargain with the union,
it, but only it, another union has been certified by the
National Labor Relations Board. Simple minority picketing
is not, and has never been, considered to be a violation of
Section 8(b)(2).

In the Hartley bill, which passed the House in 1947, there was a specific provision which would have made it unlawful to engage in any conserted interference with an employer's operations if an object of such interference was to compel the employer to recognize a representative no certified by the Board as a representative of the employees. No similar provision was contained in the Seriate bill (S. 1196). The provisions of the House bill were omitted in conference. House Conference Report 510 on H.R. 3020, 80th Cong., 1st Sess. p. 56. Insofar as we are aware, it has never since been contended that a strike picketing or other concerted activity. purely for recognition, if unaccompanied by violence and not involving third persons, constitutes a violation of any provision in Section 8(b) of the federal Act. Cf. Goodwins v. Hagedorn, 303 N. Y. 300, 101 N. E. 2d 697, in which the New York Court of Appeals held that such picketing could be enjoined by the states because it was not a violation of Section a(b).

We conclude, therefore, that the most that can be inferred from the union's course of conduct here is that it sought to exert pressure upon the employer to make some sort of concession to it. Such a concession might conceivably be recognition of the union, or execution of a union shop contract with the union. In the face of an explicit finding that the union's policy was to comply with Section 8(a)(3) in its union shop contracts, there is no basis upon which it can be assumed that the union's purpose was to obtain a union shop provision of a

^{*}H.R. 3020, 80th Cong., 1st Sess. \$ 12(a)(5)(C)

type not permitted by Section 8(a) (3). Under such circumstances, there is absolutely no basis upon which it can be urged that the union's conduct here constituted a violation of Section 8(b) (2).

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ON ANY VIEW OF THE DECISION BELOW, IT SHOULD BE IMMATERIAL WHETHER THE PICKETING HERE VIOLATED SECTION 8(b) (2) OF THE FEDERAL ACT

Having discussed above (1) the nature of the Supreme Court of Pennsylvania's decision and (2) the absence here of any violation of Section 8(b) (2) of the federal law, it is perhaps well to pause here for a moment to place these points in perspective and to relate them to the arguments of the parties. It seems to us that the various approaches to the federal-state problem here can be summarized as follows:

1. If we assume that the Pennsylvania labor relations law duplicates the federal law exactly, can the state law be enforced in any case involving an employer subject to the federal law?

This is the question which the Supreme Court of Penn-

sylvania answered in the negative.

2. If we look at the particular case presented, did the union violate Section 8(b) (2) of the federal Act? If the answer to this question is "yes", does the fact that the union conduct is forbidden by the federal law prevent the state from enforcing its law?

This is the question argued by the Company in this

Court.

3. If the answer to question 2 is "no", i.e., if the union did not violate the federal law, but did violate the state law, and if the Union's conduct is not protected activity under Section 7 of the federal law does the federal law, nevertheless, pre-empt the field so as to prevent the state from enforcing its law?

In our view, the first approach set forth above is the correct approach. Certainly it is the one taken by the Supreme Court of Pennsylvania. For the reasons set forth in Point II above, we think that the second approach—the one taken by

^{&#}x27;If the activity is protected, of course, the state cannot forbid it, Automobile Workers v. O'Brien, 339 U.S. 454; Amalgamated Association v. Wiscopsin T.R.B., 340 U.S. 383.

the company in this Court—is based upon a misconception of the federal law. On either approach, however, the answer to the federal state problem is the same, and we assume that the parties, and the National Labor Relations Board will deal with the argument adequately in their briefs, although it may very well be that argument is no more equired on this point than was an opinion by this Court when the identical question was decided in *Plankinton Packing Co.* v. Wisconsin E.R.B., 338 U. S. 953.

The question presented in the third approach is the crucial undecided question in this field of the law. The Court may not, and indeed should not, reach that issue, and we will, therefore, not discuss it at length. We should, however, like to offer, for whatever bearing it may have on the manner in which this Court decides the issues directly presented by this case, what we regard as a pertinent observation on this issue.

We assume that it is now established that a state may not forbid concerted protected activities which Congress has protected under Section 7 of the National Labor Relations Act, Automobile Workers v. O'Brien, 339 U.S. 454; Amalgamated Association vo Wisconsin E.R.B., 340 U.S. 383. We also assume that it is also settled that conduct which Congress has specifically forbidden as an unfair labor practice may not be additionally prosecuted for violation of state labor relations policy. Plankinton Packing Co. v. Wisconsin E.R.B., 338 U.S. 953. The question which is not clearly settled is whether the states may enforce their own labor relations policy to forbid conduct which is neither forbidden activity nor protected activity under the federal Act. To put the question in another wax, is it the law that state labor relations law may be applied in a situation involving interstate commerce, if it is shown affirmatively that the particular activities involved are neither protected activities under Section 7 of the federal Act nor forbidden activities under Section 8?

We respectfully submit to the Court that no rule of law set down by this Court should permit such a case by case approach. We believe that if the decision of this Court in Automobile Workers v. Wisconsin E.R.B., 336 U.S. 245, be construed as establishing an area between the protected ac-

tivities on the one hand and forbidden activities on the other, in which the states are free to apply their own labor relations policy, this Court should specifically overrule that case.

We can put our argument in support of this contention in terms of the traditional "pre-emption of the field" language. We think that the same purpose can be served, however, by simply pointing out to the Court one consequence of any such rule. That consequence is that inferior tribunals in each of the 48 states are met with the necessity of deciding, in any case in which state labor relations policy is sought to be enforced where interstate commerce is involved, whether the particular conduct involved in the case constitutes concerted protected activity or an unfair labor practice under the Labor-Management Relations Act.

In each such case, the inferior state tribunal must decide, without the benefit of investigation or participation of the National Labor Relations Board, whether the particular activity involved constitutes protected concerted activity under Section 7 of the Act and whether it constitutes an unfair labor practice under any of the Sub-sections of Section 8 of the Act. Only if both quactions are answered in the negative can the court find that it has jurisdiction to enter the field and apply the state's labor relations policy.

If precise lines were drawn in the federal statute to indicate what is protected activity and what is forbidden activity, this consequence would be serious enough. But one of the essential attributes of the National Labor Relations Act is that it sets down only broad general lines to guide an espert administrative board in making its determinations. As this Court knows, questions of what is concerted protected activity under the Act are not free from difficulty. See National Labor Relations Board v. Local Union 1229, I.B.E.W., Sup. Ct. of the United States, October Term, 1953, No. 15. Nor are questions of what constitutes forbidden activity susceptible of easy determination, at least initially, by courts unfamiliar with the background and framework of the federal statute. Here an example exists which proves the point racher clearly.

In Automobile Workers v. Wisconsin E.R.B. this Court apparently determined that the particular conduct involved

was neither protected by the federal Act or forbidden by it, and that, therefore, the state could prohibit it. It reached this conclusion in a case brought to the court by private litigants and without the benefit of any prior determination by the National Labor Relations Board. That such a method of decision may result in gross errors by the multitude of inferior tribunals to which the doctrine of that case apparently would commit the negative application of federal law, is demonstrated by the fact that even this Court committed, in the very case, what on examination is fairly easily seen to be a major error as to the scope of the Act.

In the Automobile Workers case, the activity involved was a program of intermittent work stoppages, occurring over a period of time. "The employer was not informed during this period of any specific demands which these tactics were designed to enforce, nor what concessions it could make to avoid them," 336 U.S. 245, at 249. Because this case was not heard in the normal course by the National Labor Relations Board, attention was focused on whether the intermittent character of the work stoppages removed them from the protection of Section 7 of the Act. Although it was not noticed by the court, the really serious question involved in that case was not whether the activity was protected by Section 7, but whether it was forbidden by Section 8. Section 8(b) (3) of the amended federal Act makes it an unfair labor practice for a union to refuse to bargain collectively with an employer. The application of economic pressure and the institution of a program of concerted activities, whether intermittent or not, without informing the employer what the nature of the union's demands are, or "what concessions it could make to avoid them", may be regarded, without too much question, as a violation by the union of Section 8(b) (3).

Thus, in the very case in which the Court apparently established the doctrine that the state courts could enforce state labor policy in the areas between the protected and the forbidden, it demonstrated by example the inevitable unfortunate consequences of such a doctrine—that erroneous decisions as to what constitutes an unfair labor practice and what constitutes protected concerted activity will be made by tribunals

not having the benefit of the expert body which Congress established to determine such questions in the first instance.

The lesson to be drawn from the error which the Court inadvertently committed in the Automobile Workers case is, we think, clear. The whole scheme of the federal Act is disrupted by holding that the states cannot prohibit activities which are protected by the Act or punish those which are forbidden by the Act, but can apply their own labor policy to conduct not falling within either category. For in so holding, the court converts the orderly process of adjudication by an expert board which Congress has established into a completely different system of adjudication, in which the same questions can be litigated and decided initially by state courts, subject only to review in this Court, all as a preliminary to determining whether the states are free to act in the particular circumstances.

It is almost impossible to convey to this Court the difficulties involved in arguing a question of federal labor relations law to a chancery court in a rural judicial district. The judge often has no experience in such matters. The complex federal law, with its multifarious sub-sub-sections, may be entirely new to him. He has no access to reports of the National Labor Relations Board. Yet he is asked, on an application for a temporary restraining order or preliminary injunction, to decide quickly whether an employer seeking relief from him is seeking relief against an activity protected by the federal Act and, if not, whether the employer is entitled to relief before the National Labor Relations Board.

The result of such a system of adjudication cannot fail to injure activities which Congress genuinely meant to protect. Strikes which are enjoined by a state court in the mistaken belief that they are, for some reason, not protected by the federal acts may be effectively, and permanently, defeated, irrespective of ultimate reversal of that decision on appeal to this Court—if, indeed, appeal can be taken before the controversy becomes moot. Cf. Building Union v. Ledbetter Co., 344 U.S. 178 and Building Trades Council v. Kinnard, No. 48, this Term. And the ultimate decision on the question of federal

law may, in fact, be grossly in error simply because the case is not processed through the channels which Congress provided for the determination of such questions.

If this Court should decide that the narrow ground for decision which we have heretofore urged is not available to it—that is to say, if this Court should decide that it cannot dispose of this case on the assumption that the Pennsylvania statute is identical with the federal statute, and hence must fall under the rule of the *Plankinton* case—then we respectfully urge the Court to decide more broadly, that irrespective of whether the state law here precisely corresponds with the federal law, the Court will not examine into the particular facts to find out whether the activity here is forbidden or protected by the federal Act.

The Court should, rather, repeat what it said in Bethlehem Co. v. State Board, 330 U.S. 767, 776: "We do not think that a case by case test of federal supremacy is permissible here." "Congress has occupied this field and closed it to state regulation." Automobile Workers v. O'Brien, 339 U.S. 454, 457.

We do not mean to suggest, of course, the actions which would be individually illegal under state law are insulated from state action because committed in a labor relations context. We do not say that "otherwise illegal action is made legal by concert," 336 U.S. 245, 258. We say, rather, that state labor relations law and state labor relations policy, which are applicable only because a management-union situation is presented, should not be permitted to apply where the federal law applies. Such actions as destruction of property, or seizure of another's premises, are unlawful whether committed by unions or by individuuals. State laws which are applicable to all and cut across labor relations lines certainly can be used to prevent or punish such action, irrespective of whether they are committed in concert or alone. But State laws defining and limiting permissible union activity and designed to further the states' own labor relations policy, which is what we have here, cannot co-exist with the federal law if the Congressional purpose is to be fulfilled.

CONCLUSION

in this brief anieus curine we have not attempted to reargue the issues which we assume will be dealt with directly by the parties. Our endeavor has been, first, to help the Court focus its attention on what we believe to be the precise issue presented by the case; second, to avoid any possibility that the Court will insuvertently make an erroneous assumption concerning the applicability of Section 8(b) (2) of the federal Act to the conduct here involved; finally, to submit what we believe is a pertinent consideration in viewing the entire pre-emption problem in this field.

Respectfully submitted,

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APPENDIX A

In this appendix, we set forth for the convenience of the Court what we believe are the relevant federal and state statutes, in the order of their enactment.

1935

Section 8(3) of the National Labor Relations Act of 1935, as originally enacted, 49 Stat. 452, provided as follows:

"SEC. 8. It shall be an unfair labor practice for an employer—* * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition or employment to encourage or discourage membership in any labor organization: Provided That nothing in this Act, or in the Na-. tional Industrial Recovery Act (U.S.C. Supp. VII, title 15, Secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established maintained or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9(a), in the appropriate collective bargaining unit covered by such agreement when made."

1937

The Pennsylvania Labor Relations Act, Act of June 1, 1937, P.L. 1168, No. 294, as originally enacted provided, in part, as follows:

"Section 3. Definitions. When used in this act-

(c) The term 'employer' shall not include any person subject to the Federal Railway Labor Act or the National Labor Relations Act; as amended from time to time.

Section 6. Unfair Labor Practices—It shall be an unfair practice for an employer—

(c) By discrimination in repard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this act, or in any agreement approved or prescribed thereunder, or in any other

statute of this Commonwealth, shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require, as a condition of employment, membership therein, it such labor organization is the representative of the employes, as provided in section seven (a) of this act, in the approprinte collective bargaining unit covered by such agreement when made * * *."

"Section 8. Prevention of Unfair Labor Practices. -

(a) The board is empowered, as hereinafter provided. to prevent any person from engaging in any unfair labor practice listed in section six of this act. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that may have been or may be established by agreement, law or otherwise."

1939

The Act of June 9, 1939, P.L. 302, No. 163, amended the Pennsylvania Labor Anti-Injunction Act, as follows (material added by the amendment in Italics):

"Section 4. No court of this Commonwealth shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case included within this act, except in strict conformity with the provisions of this act, nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this act. Exclusive jurisdiction and power to hear and determine all actions and suits coming under the provisions of this act, shall be vested in the courts of common pleas of the several counties of this Commonwealth: Provided, however, That this act shall 3 not apply in any case-

(a) Involving a labor dispute as defined herein, which is in disregard, breach, or violation of * * * a valid subsisting labor agreement arrived at between an employer and the representatives designated or selected by the employes for the purpose of collective bargaining. as defined and provided for in the [Pennsylvania Labor Relations | act * * * and amendments thereto, or as defined and provided for in the National Labor Relai tions Act * * : Provided, however, That the complaining person has not, during the term of the said agreement, committed an act as defined in both of the afore-

said acts as an unfair labor practice * *

(b) Where a majority of the employes have not joined a labor organization, or where two or more labor organizations are competing for membership of the employes, and any labor organization or any of its officers, agents, representatives, employes, or members engages in a course of conduct intended or calculated to coarce an employer to collegel or require his employes to profer or become members of or otherwise join any labor organization.

(c) Where any person, association, employe, labor organization, or any employe, agent, representative, or officer of a labor organization engages in a course of conduct intended or calculated to coerce an employer to commit a violation of the Pennsylvania Labor Relations Act of 1937 or the National Labor Relations Act of 1937 or the National Labor Relations

(d) Where in the course of a labor dispute as herein defined, an employe, or employes acting in concert, or a labor organization, or the members, officers, agents, or representatives of a labor erganization or anyone acting for such organization, seize, hold, damage, or destroy the plant, equipment, machinery, or other property of the employer with the intention of compelling the employer to accode to any demands, conditions, or terms of employment, or for collective bargaining."

1948

The Act of May 27, 1943, P.L. 741, No. 315, amended the Pennsylvania Labor Relations Act by deleting from clause (c) of Section 3 of that Act, the following words: "or the National Labor Relations Act as amended from time to time."

1947

The Labor Management Relations Act, 1947, 61 Stat. 136-162, amended the National Labor Relations Act of 1935, in pertinent part, to read as follows:

"SEC. 8(a) It shall be an unfair labor practice for an employer—

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice)

to require as a condition of employment membership therein on or after the thirtieth day following the becoming of such employment or the effective date of such agreement, whichever is the later. (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9(e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: * * *

"(2) to cause or attempt to cause an employer to discriminate against on employee in violation of subsection (a) (3) * * *

"(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject

to the provisions of section 9(a):

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: "(B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9."

1951

Public Law 189, October 22, 1951, 65 Stat. 601, further amended the National Labor Relations Act, in part, as follows:

"(b) Subsection (a) (3) of section 8 of said Act is amended by striking out so much of the first sentence as reads 'and (ii) if, following the most recent election held as provided in Section 9(e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement; and inserting in fleu thereof the following; and has at the time the agreement was made or, within the preceding 12 months received from the Board a notice of compliance with sections 9(f), (g), and (f) and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement;"

APPENDEX B

The following appendix is copied directly from pages 40-48 of the brief for the appellee, JOSEPH GARNER and A. JOSEPH GARNER, trading at CENTRAL STORAGE AND TRANSPER COMPANY, in the Supreme Court of Pennsylvania in the instant case:

D. The primary picketing enjoined is not an unfair labor practice under the Federal Labor Management Relations Act

The final, narrowest, last-ditch contention of appellants (at page 55, point VI of their brief) is that the primary picketing enjoined is prescribed by the Labor Management Relations. Act. This argument calls for an analysis of the scope of certain unfair labor practice provisions of that act, principally section 8(b) (1) and section 8(b) (2). In this respect, the purpose of Congress in that Act, as declared in Alpoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board, 336 U.S. 301, 306, 69 S. Ct. 584, 587, was not to displace state power to deal with unfair labor practices, but

"merely to preclude conflict in the administration of remedies for the practices proscribed by sec. 8."

Section 8(b) (4), the secondary boycott provision, was properly distinguished by the learned court below (187a). The Supreme Court of the United States in N.L.R.B. v. International Rice Milling Co., 341 U.S. 665, 670-671, 77 S. Ct. 961, 964, has come to the same conclusion that,

"the applicable proscriptions of sec. 8(b) (4) are expressly limited to the inducement or encouragement of concerted conduct by the employees of the neutral employers".

This section is not now invoked by appellants.

Section 8(b) (1), declaring that it shall be an unfair labor practice for a labor organization "to restrain or coerce" employees in the exercise of certain guaranteed rights falls short of the coercion of the employer, Central, found in this case. The inapplicability of section 8(b) (1) to peaceful organizational picketing, or to any picketing not accompanied by violence or threats, overt or implicit, clearly appears from the opinion of the learned court below (185a-187a) and the lead-

ing case of Watson's Specialty Store, 80 N.L.R.B. 533, 539, 547 (1948), enforced in N.L.R.B. v. Local 74, etc., 181 F. (2d) 126, affirmed on other grounds in 341 U.S. 707, 71 S. Ct. 966, 969. The states are accordingly free to assume jurisdiction, at the suit of private parties, of peaceful organizational picketing: Greenberg. Strikes indirectly Prohibited by Section 8(b) of the Taft-Hartley Act, Proceedings of Fourth Annual Conference on Labor at New York University, pages 484 and 485 and note 75; Kinesid-Webber Motor Ob. v. Quins, 241 S.W. (2d) 886 (Mo. 1951); Goodwins, Inc. v. Hagedorn, 303 N.Y. 300, 101 N.E. (2d) 697 (1951).

Nothing to the centrary appears in the only case relating to section 8(b) (1) cited by appellants (page 57, note 78). In Direct Transit Lines v. Teamsters Union, 52 A.L.C. 233, 21 CCH Labor Cases par. 66,774, 29 LRRM 2492 (W.D. Mich. 1952) the court's sole statement with respect to that section in denying a motion to remand was the following:

"It is alleged in Paragraph 6(a) of the complaint that the defendants attempted unlawfully to intimidate and coerce the plaintiff's drivers into joining the defendant union. This allegation, if true, would be a violation of Sec. 8(b) (1) of the Act, which reads as follows " ""

The only remaining unfair labor practice provision now invoked by appellants is section 8(b) (2), 29 U.S.C.A. sec. 158(b) (2), pocket part. As correctly summarized by appellants (at page 57 of brief for appellants),

"Section 8(b) (2) of the Labor-Management Relations Act of 1947, supra, makes it an unfair labor practice for any union or its agents to cause or attempt to enuse an employer to discriminate against an employee in violation of subsection (a)(3)" which latter subsection prohibits any employer from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in a labor organization. Not only a strike, but the more threat of one, to force an employer to accede to union demands for a contract provision requiring union membership as a condition of employment without legal sanction." has been held by the National Labor Relations Board to violate-Section 8(b) (2)."

We have read with attention all five of the cases construing this section cited by appellants (at page 58 and note 79 of their brief) and have concluded without hesitation that this case is not controlled thereby.

(1) In ret Asterious Radio Asseriation, 82 N.L.R.B. 1344, 1345, 24 LRRM 1006, appellant's first circuiton, involved union security provisions with which the Labor Management Relations Act was particularly concerned. It arose in an industry where the work force typically exceeded available employment and unions utilized agreements requiring the employer to secure needed employees only through union hiring halls, open only to union members. Noting that the biring hall employment procedure adamently demanded "closely resembles the conventional union shop" the Board held that,

"Respondence, by insisting upon the inclusion of the hiring hell employment procedure in any contract to be negotiated with the Employers, engaged in untair labor practices within the meaning of Section 8(b)(2) of the Act."

(2) In re: United Mine Workers of America, 83 N.L.R.B. 916, 920, 24 L.R.M held that the union, in "causing the Companies to execute an unauthorized union shop agreement, violeted Section 8(b) (2) of the Act."

(3) In re: Denver Building Trades Council, 90 N.L.R.B. 1768, 1769, 26 LERRI 1382, notwithstanding the absence of a request for a closed shop contract, held that,

"maintenance by Shore of closed-shop conditions, or even of a policy of discriminatory hiring on the basis of union membership in a craft junion, would alone have been enough to bring him within the ban of Section 8(a) (3)

(4) In re-Markey Radio and Telegraph Co., 90 N.L.R.E. No. 106, 28 L.R.EM 1579, 1580, recognized that an "activity which has both a lawful and or swful objective is unlawful and observed:

"ACA Mamunity insists I that the Respondent agree to an unlawful union-security contract." Such a strike, to compel the Respondents to violate a clear Congressional mandate as expressed in Section 8(a)(3) of the Act, was a strike which, if ACA had been a respondent, we would have found to violate Section 8(b)(2) of the Act." (5) In the fifth case cited by appellants, N.L.R.B. v. National Markins Vision, 175 E. (2d) 686 (C.C.A. 2, 1949) Circuit Judge Frank approved the Board's inding (quoted at page 688) that,

"what NMU was demanding." " was not merely a continuation of " " the hiring-hall clause " " Lut a continuation of the practice outlined above, by which professance in job assignment and job retention was given to NMU members."

He turther approved the Board's legal conclusion (quoted at page 680) that.

Section 8(h) (2) * * extends * to instances in which the union * seeks to cause the coupleyer to accept conditions under which any non-union employee or job applicant will be importably discriminated against *

Judge Frank quoted Senator Tult's description (note 3, page 550) of the evils of closed-strop arrangements as "best exemplified by the so-called biring halls on the west coast where shipowners cannot employ anyone unless the taken sends him to them." The court inseredore held (at page 550) that

"There is ample record evidence to support the Board's -findings of fact. And the statute, in the light of its clear legislative bistory' relative to hiring-halls, justifies the Board's legal conclusions."

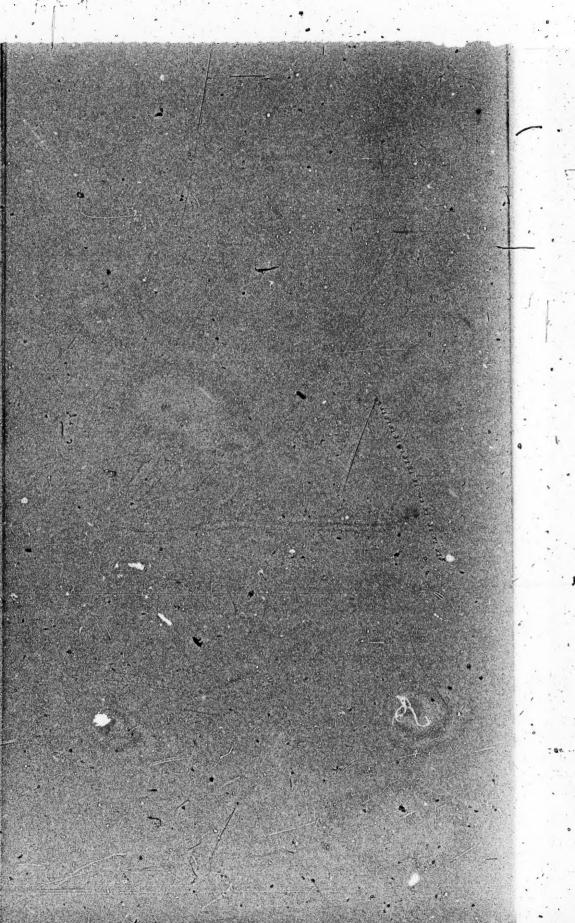
Section 8(b) (2) occordingly does not apply, on the precise facts presented. Appellants have cited no decisions that support their contention (at page 59) that "picketing, as was found in the histant case, to operce an employee to compil his employees to join a union, (allo matroly within the provision." The wabit of Section 8(b) (2) is more nervow, as it is limited to discrimination in regard to hire or any condition of employment, and is further limited, of course, to discrimination. Appellants do not content that there would be that particular type of discrimination, as to conditions of employment if Central had required its employees to become members of the picketing union (as a Teamster local attempted to bring about in Silbsporth v. Local No. 575, etc., 309 high. 746, 16 N. W. (2d) 145, 150), "by paying their initiation feet, regardless of whether or not the drivers wished to foin." Further, an unfair labor practice under section 8(b) (2) is dependent

upon a purpose "to catter an employer to distribute to applicate an employed" In this makes of procedure. Applicate have pointed part and discrimination where twee, atthough discrimination where twee, atthough discrimination is of the same on. Plainty, as stated in 50 Our pair. Juris Securities 322.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 56

JOSEPH GARNER AND A. JOSEPH GARNER, TRADING AS CENTRAL STORAGE AND TRANSFER COMPANY, PETITIONERS

TEAMSTERS, CHAUFFEURS AND HELPERS, LOCAL UNION No. 776 (A. F. L.), ET AL.

ON WRIT OF CERTIONARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PHYSELVANIA

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS ANICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of Lansylvania (R. 230-238) is reported at 373 Pa. 19, 94 A. 2d 893. The opinion of the trial court, the Court of Common Pleas of Dauphin County, Pennsylvania (R. 169a-202a), is reported at 62 Dauphin County Reporter 339.

JURIEDICTION

The petition for a writ of certiorari was granted on June 15, 1953. The jurisdiction of this Court is invoked under 28 U.S. C. 1257 (3).

CONTRACTOR PER CHARTEST AND

Whether, at the private suit of an employer, a state court may enjoin, as unlawful under state law regulating labor-management relations, conduct which also violates Section 8 (b) (2) of the National Labor Relations Act.

STATUTS INVOLVED

The pertinent provisions of the National Labor Relations Act, before amendment (49 Stat. 449, 29 U. S. C. 151, et seq.), and ther amendment (61 Stat. 136, 29 U. S. C. Supp. V. 141, et seq.), are set forth in the Appendix, infra, pp. 43-54.

EDATEDER

Petitioner is a partnership engaged in the trucking and storage business in Harrisburg, Pennsylvania (R. 171a; 19a-21a). In the main, its operations consist of making local deliveries within the Harrisburg area of goods shipped from outside Harrisburg both by rail and by truck, and of picking up goods locally for delivery to such carriers for transport outside of Harrisburg (ibid.). To carry on this business petitioner maintains terminal and platform facilities at the freight station of the Reading Railroad Company

in Harrisburg, where the interchange of shipments to and from peditionly is baseled (the) Both the Beading Ballound Company and its trucking division, Reading Cransportation Company, are under contract with petitioner to use its pickup and delivery services exclusively for their Harrisburg shipments, including freight which originates from or is destined for out-of-state points (R. 172a; 21a-22a)! In addition, petiioner makes local deliveries for approximately fifteen trucking lines carrying goods consigned to the Exectioning area (R. 1714; 224). Petitioner's volume of business from these sources is from four to five hundred dollars a day (B. 176a; 27a). Under its established administrative standards the National Labor Relations Board exercises purediction in cases brought before it involving busineeses whose effect on interstate commerce is like that of petitioner's. See, c. g., Breeding Pransfer Company, 95 N. L. R. B. 1157; Teamsters Local Union No. 174, 90 N. L. R. B. 1851; Bix-

The Reading Railway aperates on lines principally in New Jersey and Pennsylvania. It consects with many other interstate valinoids including the Bultimore and Ohio Pennsylvania R. R. Co. New York Central Ry, and Delaware, Lackswams & Western Ry. Co. In addition, it owns forminal facilities on the Delaware River at Philadelphia through which it handles large volumes of waterborns traffic for and from foreign and coastal parts. These generally available and widely known facts may be verified in Standard and Poor's, Corporation Records, Vol. 14 No. 75, p. 1746, and may be noticed judicially by the Court. See Parker v. Brown, 817 U. S. 841, 843.

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Local (1) Transport Union (A. P. of L.)
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wagen & transport working conditions

The picketing began on June 7, 1950, and was condicted in a percent and orderly manner (Refer 20c). The impority of the truck drivers and other employment (companies for whom petitional partformed pick-up and delivery services returned to occur the picket line, which resulted in a shut-deem of shout 95 percent of petitioner's operations (R. 176a; 24a-27a). Petitionar complicated to respondent that the picketing was rutining (Re) has ness," but was unsuccessful in parameting respondent to remove the pickets to petitioner's business office, "where (its) men come in," and away from the loading platform where its offset was to prevent petitioner from carrying on its business (R. 170a; 25a-26a). Respondent stated to petitioner that the picketing was adopted "to try to sell the men to join the Union"

instead of coming around and saking you fee the names of each and everyone of your employees and " " [going] from door to door, which would mean a lot of time and effect " " " (R. 176a; 25a).

On June 9, 1949, perference that in the Court of Common Pleas for Dauphin County, Pennsylvania, a complaint the bijunctive sellet again the picketing. The gravamen of the complaint was that the picketing was improper under state law because its purpose was "to everes [petitioner] to compel or require its amployees to become members of or otherwise join [respondent] union (R. 5a). Following a hearing at which evidence was adduced in support of the allegations of the complaint, a preliminary injudence was present on June 17, 1963 (R. 102a). The court expressly found in conformity with the allegations of the complaint, that the picketing was "calculated to socies the [perizoner] into a violation of law by requiring [it] to force [its] employees join the [seepornent] paion! (2 102

Thereafter, further hearings were conducted an petitioner's prayer that the lajtustion be made personant. At this stage of the case respondent contended that the state court was without juried diction of the proceedings because "[petitioner's] business involves and it is suggested in interstate commerce thereby subjecting the controversy to the exclusive jurisdiction of the National Labor

The state of the s

The same of the control of the contr Section 8 (b) (2) of the National Act Marie 1910 By Albandan Carl Constitution 12 continued to state an exployer to discreminate application and their twine measurable application in the Eukary twine measurable and the Eukary twink Labor Eukary twink Labor Eukary twink Labor Eukary twink Labor Eukary twink Eukary Eukary twink Eukary twink Eukary Euk thought him the street street of the boy. The latitude Act. Thrugh not an under those practice within the time of that Let was never below illegal."

^{*}The Panneylvanis Labor Relations Act of June 1, 1987, P. L. 1168, contains a provision similar to Section 8 (a) (5)

the Act of Congress probibits the same activity on the part of a labor organization in this respect as does the Pennsylvania Lollor Walations Act, the only difference being that the Federal activities of probability in this respect to only difference being that the Federal activities of any chin picketing in all notain labor produces whereas the Clate act does not so list it but our counts have declared if to be unlawful because aims aims? Act, the counts declared to be an unlair ting point the Clate deep declare to be an unlair telest greatice on his part! (R. 252):

In the view of the court below, the question thus presented was "whether [Congress] has manifested a willingness that the States should exercise concurrent jurisdiction in such a case" (R. 253). Answering that question, the court hold that "I was the intantion of Congress that if an activity of a labor organization might be held to constitute one of the unfair labor precitions ammerated in "I section 8 (b) of the Labor Management Helations Act, the power to determine that question and the actions that should be taken in the matter were to be vested in a ningle agency, namely, the National Labor Re-

of the National Act, insofar or it prohibite, with exceptions increased in the employee discontinuation against amployees with except to secure of supleyment on the basis of their prior activities or membership. Unlike the National Act, the Pennsylvania statute contains no provisions which make union conduct of the kind therged in the complaint here an unfair labor practice. Purdon's Poses. Stat. Am., Tit. 48, § 211.6.

lations Board, in order that thereby a uniform antiqual policy might be developed and enforced? (E. 197).

THE STATE OF THE PARTY OF THE P

On the ultimate facts found by the state courts, the single question presented is whether conduct subject to the jurisdiction of the Board as an unfair labor practice under Section 8 (b) (2) of the National Labor Relations Act may be enjoined by a state court as a violation of state law. It is our position that the Supreme Court of Pennsylvania was correct in ruling that state courts

lack such power.

A. By adopting the administrative approach in its attempt to minimize the obstructions to interstate commerce created by industrial strife, Congress "intended to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining." S.Rep. No. 573, 74th Cong., 1st Sess., p. 15, quoted by this Court in Amalgamated Utility Workers v. Consolidated Edison Co., 309 U. S. 261, 267. To this end Congress created the Board to vindicate the public rights conferred by the Act, and granted it comprehensive power to remedy activities defined in the Act as unfairlabor practices. As shown by the terms of the Act, its history, and the administrative procedures it established, this power was made exclusive of any concurrent jurisdiction in any other tribunal to regulate the conduct with which it dealt.

The terms and framework of the original Act, which thus foreclosed the assertion of jurisdiction by state courts to regulate unfair labor practice conduct, were not materially altered by the 1947 amendments. In one change the Board's General Counsel was authorized, in specified instances, to seek temporary relief in federal district courts against the commission of unfair labor practices pending hearing before the Board. This change, however, was designed simply to make the existing structure more effective, and not to make a departure from the established rule that unfair labor practices were to be remedied solely in accordance with the Act's procedures.

In a further change, the amendments omitted the term "exclusive" in describing the Board's jurisdiction to prevent unfair labor practices. Section 10 (a) of the Act. Here also, however, there was no intent to permit concurrent enforcement by state courts of local law with respect to practices proscribed by the Federal Act. The deletion of "exclusive" was thought to be logically required by the new sections "authorizing temporary injunctions enjoining alleged unfair labor practices" at the suit of the Board in federal district courts pending Board adjudication, and Ly the "provisions making unions suable" for money damages for violations of Section 8 (b) (4). H.

Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 52. It was for this reason alone that the word "exclusive" was deleted. Thus the 1947 amendments left unchanged the Act's underlying thesis that the uniform and specialized regulation for which it provided was not to be interfered with by concurrent regulation of the same conduct by the states.

The litigation in the present case strikingly illustrates how the Congressional scheme is undermined by such concurrent regulation. For in obtaining an injunction against the unfair labor practice activities involved here, petitioner invoked, at every step of the proceedings, procedures diametrically opposed to those provided in the Act, and obtained rulings at variance with those which might have been elicited from the Board.

The correctness of the conclusion that the Act precludes states from granting relief against unfair labor practice conduct has been decisively confirmed, we believe, by the decision of this Court in Plankinton Packing Co. v. Wisconsin Employment Relations Board, 338 U. S. 953. There the Court reversed without opinion the decision of the Wisconsin Supreme Court which had upheld the right of an agency of that State to remedy as a violation of state law the discharge of an employee which also constituted an unfair labor practice under the Act. This decision is

fully consistent with both prior and subsequent cases in this Court.

B. Petitioner's contention that while the Act may preclude state administrative agencies from infringing upon the Board's unfair labor practice jurisdiction, it has no such impact upon the invisdiction of state courts in the same field so long as they are enforcing private rights, is wholly without merit. Manifestly, the "real potentials of conflict" (La Crosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U. S. 18, 26) which Congress meant to avoid are the same whether a stete regulates alleged unfair labor practice conduct through its courts in private lawsuits or through its administrative agencies. Petitioner can derive no support for the distinction it attempts to make from the language of Section 10 (a), which confers jurisdiction on the Board to remedy unfair labor practices. In stating that the Board's power "shall not be affected by any other means of adjustment." that Section follows the wording of the original Act which was designed to make the Board's power paramount in the field of unfair labor practice activities. Similarly, the proviso to Section 10 (a) permitting the Board to cede its jurisdiction by agreement in specified instances to an "agency of any State" furnishes no basis for an inference that state courts possess such jurisdiction without cession. Rather, the proviso clearly indicates that

with respect to conduct which the Board is authorized to remedy, no concurrent jurisdiction exists in the states except in strict conformity with the crus of the proviso.

AROUMENT

The National Labor Relations Act is exclusive in the field it governs, precluding concurrent state regulation of the same conducts.

The gravamen of petitioner's complaint, as stated by the court below (R. 238) and acknowledged by petitioner (Br. 15), "was that the de-Lendant Union was engaged in an activity which was unlawful under the law of the State but which also constituted an unfair labor practice under * * [Section 8 (b) (2)] of the Labor Management Relations Act * * *." The trial court found as a fact (R. 179a) that the Union conduct in question was "deliberately designed to coerce [petitioner], by causing it substantial business lesses, to compel or require its employees to become members of the Union." This Lindbig. undisturbed by the court below, precisely states the unfair labor practice denounced by Section 8 (b) (2) of the National Act.

^{*}Section 8 (b) (d) reads in pertinent part: "It shall be an unfair labor practice for a labor organization or its agents." to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3). " Subsection (a) (3), with qualifications immaterial here, makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of

Accordingly, while the Board itself might or might not have made the same ultimate fact finding on the record in this case, the question is presented whether a state court may enjoin as a violation of state law conduct proscribed by the National Labor Relations Act. Addressing ourselves to that question, we submit that the decision of the Supreme Court of Pennsylvania is correct.

In Plankinton Packing Co. v. Wisconsin Employment Relations Board, 338 U. S. 953, this Court held that a state regulatory agency acting under authority of local law was powerless to regulate conduct which the National Labor Relations Act also proscribed as an unfair labor practice. The basis of the decision, as subsequently explained by this Court, was that "states may not regulate in respect to rights guaranteed by Congress in Section I" of the Federal Act. Amalgonated Association v. Wisconsin Employment Relations Board, 340 U. S. 383, 391. The same basic considerations which barred the state from acting in that case serve to preclude state action in this case.

employment or any term or condition of employment to encourage or discourage membership in any labor organization. It is clear that a union which, like the one here, has no valid union-security agreement with the employer, violates Section 8 (b) (2) when it causes or attempts to cause the employer to make union membership a condition of employment. See, s. g., Denver Building and Construction Trades Council, 90 N. L. R. B. 1768, enforced, 192 F. 2d 577 (C. A. 10); Medford Building and Construction Trades Council, 96 N. L. R. B. 165.

A. The terms and structure of the Act demonstrate a purpose to achieve uniform, specialized, and exclusive regulation of the field of conduct it governs

1. In the familiar administrative pattern which Congress has traditionally followed in enacting regulatory legislation to meet national problems, the National Labor Relations Act created the Board as a public agency entrusted with exclusive authority to enforce its provisions. To assure, against subversion of the uniformity and specialization of its regulation, Congress made it clear that the Act "is paramount over other laws that might touch upon similar subject matters and that its provisions were "intended to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining."S. Rep. No. 573, 74th Cong., 1st Sess., p. 15, quoted by this Court in Amalgamated Utility Workers v. Consolidated Edison Co., 309 U. S. 261, 267. See also H. Rep. No. 1147, 74th Cong., 1st Sess., p. 23. The entire procedural framework of the Act was molded to implement this purpose, and thereby to prevent an evolution of patchwork regulation with respect to a national problem which had created "substantial obstructions to the free flow of commerce." Section 1 of the Act. See National Labor Relations Board v. Hearst Publications, 322 U. S. 111. 122-124. To the extent that it bears on the issue

presented here, this framework and the purpose it implements have not been materially altered by the 1947 amendments.

Thus, as it did originally, the amended Act seeks to eliminate disruptions to commerce in the field of labor relations by empowering the Board "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." Section 10 (a). To carry out this function, Congress created the Board as an agency of the United States. Section 3 (a). The method provided for enabling a private party to obtain redress against unfair labor practices is still the fling with the Board of a charge, which "setg in motion the machinery of an inquiry." National Labor Relations Board v. Indiana & Michigan Electric Co., 318 U. S. 9, 18. The substantially unaltered procedural scheme remains Mesigned to establish "a public agency acting in the public interest, not any private person or group, * * * as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce" (Amalgamated Utility Workers v. Consolidated Edison Co., 309 U.S. 251, 264, 265).

Strengthening the Board's procedural arsenal, the amended Act enables the Board to obtain interlocutory relief against the commission of unfair labor practices (National Labor Relations Board v. Denver Building and Construction

Brables Cornell, 341 10, 81 875, 681-688) by myd) & ing to an appropriate federal district court, during the pendency of proceedings before the Board, for a temporary injunction. Section 10 (j) and (1). With respect to the unfair labor practices defined by Section 8 (b) (4) (A), (B), and (O), should the "officer or regional afformey" investigating the charge have "reasonable cause to believe such charge is from and that a complaint should issue ! he is mandatory for alm: to pention a federal district contact for appropriate inuncive relies predict the last stipulication of the Board with respect to such imater? Section 10 (1). The same procedure is applicable to unfair labor practices charged under Section 8 (b) (4) (D) except that application for tempoany in anchive relief in not mandato w Section 10 (i). With respect to all other mutain labor. precises after the issuance of a complaint the Board may in its discretion seek interlocutory relief. Section 10 (i).

It is obvious, of course, that the provision for interlocutory injunctions to be sought by the Board afferds no basis for a state court to grant injunctive relief at the suit of a private party for unfair labor practice conduct violative of state law as well as of the National Act. That this amendment presupposed the retention by the Board of sole authority to obtain injunctions in such cases is conclusively shown in the report of

the Senate Committee, which explains its purpose as follows (S. Rep. No. 105, 80th Cong., 1st Sees., p. 8):

> Time is usually of the essence in these matters, and consequently, the relatively slow procedure of Board hearing and order, followed many months later by an enfacing heares of the Livenit court of appeals falls short of schieving the feated adiron the recope dimension of the obstructions to the free flow of commerce and encouragement of the practice as procedure of free and private hollective bargaining. Hence we have provided that the Board acting in the public interest and not in vindication of purely private rights, may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such relief in the case of erites and boycoite defined as unfair labor ossesioss. [Emphasia udded.]

When the IMT amendments were under consideration for Congress, it was proposed that private persons should be permitted to have recomments the Federal district courts for injunctive relief against violations of Section 8 (b) (6) of the amendment and 8 for No. 165 80th Cong., in Sec., pp. 54-56; U2 Cong. Her. 1884-4838. After unsel discussion the proposed was rejected. St Cong. Rec. 4847. The discussion is illuminating because both the supporters and advantation of the proposal recognized the Board's cachinate junistic labor presentess proposed recognized the Board's cachinate junisis labor presentess proposed by the statute. S. Rep. No. 106, p. 54; 28 Cong. Rec. 4839, 4041, 4845. Petitioner's references to the callegey between Senators McClellan and Ball during the debate on this proposal, which is claimed to reveal a "recognition of continuing state court jurisdic-

In a further change, upon which petitioner relies to establish the state power disclaimed by the
Pennsylvania Supreme Court (Br. 48 et 267.),
The 1947 amendments deleted the word "excludive" from Section 10 (a) of the Act, which empowers the Board to prevent unfair labor practices. Section 10 (a), before the amendments
read. "This power (to prevent any person from
ongaging in thy unfair labor practice) hindly be
exclusive and shall not be alleged by any other
means of adjustment or prevention that has been
or may be established by agreement, code, law,
or otherwise." The 1947 amendments eliminated
the phrase "shall be assentive."

It is clear, however, that Congress, by the mere chicking and strengthening the Act's unified scheme of attengthening the Act's unified scheme of attengthening the Act's unified intend to permit private parties to undermine that scheme by respect to state courts on the theory that they were entyrcing local law. There was a specific and plainly a third reason for dropping the word "exclusive"—a reason which affords no basis for petitioner's position in this case. The change was designed simply to accommodate the new provisions enacted in 1947 which allowed for

tion under state law" in the field of secondary boycotta (Br. p. 34), can hardly be said to indicate the contrary. For the statements referred to related to the availability of state-remedies before the 1947 amendments made certain secondary boycotts unfair labor practices subject to the Board's jurisdiction.

marant consideration of under labor procious in specified instances. Thus, as the Rouse conferes applained; because of the new sections "authorizing temporary injunctions enjoining alleged unfair labor practices" at the suit of the Board. in a federal district court pending proceedings before the Board (see Sections 10 (j) and (l). and sepre, pp. 15-17), and because of provisions making unions surale" for money damages for violations of Section 8 (b) (4) (Section 303), it was thought no league appropriate to leastibe the Board's power as wholly exclusive XH. Conf. Bop. No. 510, 89th Copy, 1st Beat, p. 52. It was for this reason alone that the word "exclusive" was deleted. The emission of this single word, a slight change fully explained by the legislative history, was obviously not intended by Congress

The conferent added that "the conference agreement makes their that, where two remedies exist, one before the Board and one bafars the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies." Coursely to the elaborate meaning petitioner asserties, to this language (Br. pp. 27, 56-50), in its context the "other remedies" alluded to plainly relate to take provided in Sections 10 (j) and (l), and 308, and not to the kind of state court remedy sought by petitioner—a wholly different reasted which is in many itself with in this passage from the legislative biscopy of the amendments. Cf., Amendmen Mill Co. v. Teatile Workers Union, 167 F. 2d 183, 187 (C. A. 4). This becomes even more apparent when it is considered that the specific remedies added by Sections 10 (j), (l), and 308 are the only occasions mentioned either in the Act or by the conferees where "two remedies exist [for unfair labor practice conduct], one before the Board and one before the courts.

to sifect a drastic innovation in the scheme for remedying unfair labor practice conduct. Associate Gotton Edit Co. v. Tentals Workers Union, 167 P. 24 183, 187 (C. A. 4); Gerry v. Superior Court, 29 Cal. 24 119, 127, 128, 194 P. 24 689, 694, 695; MaNish v. American Brees Co., 139 Conn. 34, 80; A. 24 366; Born v. Genes, 101 F. Supp. 473, 477 (D. Alaska). See also, Capital Service, Inc. v. National Labor Relations Board, 204 F. 24 848 (C. A. 9).

In thing it is evaluate that if the stroughed has as it the original Mongress has worked out elab. orate administrative Deschinuty for dealing with the whole field of labor relationships, a matter requiring specialized atill and experience, and has provided tor the handling of unfair labor practices by an schministrative agreesy equipped for the task." Amagon Cotton Mill Co. V. Testile Workers Union, supro, at 187. As in Toxas and - No Bailway Company v. Abitens Cotton Oil Company, 204 U. S. 426 the secretary subject, history, and purpose of the Ast involved here converge to require that the statutory scheme be held exclusive in the field it regulates. In Texas and Pacific, the initial exclusive jurisdiction of the Interstate Commerce Commission was implied, although not in terms prescribed, because of the "indissoluble unity" of the statutory scheme, the need for a "uniform standard," the conforment of "administrative power" upon the Commission, and "because, if the power existed in both courts and the Commission to originally hear complaints " ", there might be a divergence between the action of the Commission and the decision of a court " "which would render the enforcement of the act impossible " 204 U.S. at 440-441. Here, as there, "the act cannot be held to destroy itself." Id. at 445.

2. Ample illustrations of the manner in which the position nexed upon the Court by petitioner would effectively destroy the "uniformity of administrative policy and disposition, expertness of judgment, and finally in determination" (Aircraft & Diesel Corp. v. Hierold 331 U & 752, 768 768), which are the ends sought by Congress in the Act, are available in the factual circumstances of the case at bar. To relieve its business of the picketing carried on at its loading platform, petitioner sought and obtained in a private lawsuit injunetive relief from the Pennsylvania trial court. The points of conflict of this action with the scheme envisioned by Congress for preventing picketing that constitutes as unfair labor practice are many. At the outset, the Act permits no private right of action. Application must be made by the filing of a charge with the General Counsel of the Board who has discretionary authority to determine whether to proceed with the

ander the Act, the Greenal Coupsel's office will, before proceeding to samplaint, utilize its experience to effect as informal adjustment of the case, consistent with the public policies contained in the Act. Such informal procedures, which customarily close nearly 50 percent of all unfair labor practice meets brought to the Board, were of source never invoked in this passes.

if chore to coneve as informal sectionent fail and a complaint is issued alleging an unfair labor progress provided that the case should be presented by the General Counsel of the Board acting in the public interest, and heard by the administrative egoney charged with the responsibility of sindicating public rights (Nathanson v. National Labor Belations Board, 344 U. S. 25, 27), not handled by a contestant in the case, here the employer, and brought before a state every in the form of a private lawquit. And, in contrast to pentioper's action in obtaining a preliminary injunction from a state office Congress provided that the Coneral Counselmay obtain temporary injunctive relief in the federal district courts pending determination of a case

'See Seventeenth Annual Report of the Board, p. 286 (Gov't. Print. Off., 1058).

^{*}See a. g., General Drivers v. National Labor Relations Board, 179 F. 2d 492 (C. A. 10); Lincourt v. National Labor Relations Board, 170 F. 2d 306 (C. A. 1); Haleston Drug Stores v. National Labor Relations Board, 187 F. 2d 418, 422 (C. A. 9), certiorari denind, 542 U. S. 815.

like this one if, in the exercise of his discretion, he thinks it appropriate (expre, p. 16).

Beyond the disparities between the precedures Congress intended to be applied to exact involving unfair labor practices and those utilized by petitioner in this case, the state court's factual forminations and choice of recordy further illustrate the breakdown of uniform administration of lator policy which movitably results from domestic sent regulation of themsteal conduct. Thus the Board, if the case had been before it, might have drawn different inferences than the trial consecutive programmes and in the professe. Congress would have intended that there much be as many independent conclusions with respect to pridence conservator unifor lation practical as Dane are localities which may escuidar such conduct to be violative of their own law. But such as intent earnor he equated with the purpose of the administrative scheme adopted by Congress to them with cases like this one.

Finally, it is to be observed that the injunction granted by the trial court enjoined respondent from all picketing at petitionar's leading platform, without respect to its purpose. Under the Act, any injunctive relief would have been restricted to the unfair labor practice involved, or any related violation. National Labor Relations Board v. Express Publishing Company 312 U.S. 426. In addition, the state court remedy here

made no province for the poeting of notices, which the Bourd contomatily orders as a means of effectuating the public policies of the Act. Seven-teenth Annual Report of the Board, p. 208 (Gov't, Print, Off, 1953).

Thus at each step of this case, petitioner invoked procedures different from those provided for in the Act, and obtained rulings at variance with those which inight have been chiefed from the Board. Clearly, there can be no uniformity of regulation, he specialisation and expertness of administration, and no guarantee that public rights rather than private interests will be the basis of decision if private parties may have recourse to local tribunals for relief against the very conduct which Congress has prohibited. As the Court of Appeals for the Fourth Circuit has pointed out in the smalogous case involving an effort by a private party to enforce the National Leber Relations Act in a federal district court (Amason Cotton Mill Co. v. Textile Workers Union, 187 P. 23 188, 180)

More than two hundred local tribunals of general jurisdiction would be clothed with the special jurisdiction now vested in a unified agency with nationwide jurisdiction over labor controversies; and it is not difficult to foresee the confusion that would necessarily result. Certainly the statute should not be given an interpretation which would lead to such consequences.

The mischief warned against by the Fourth Circuit with respect to an overlapping of federal court jurisdiction in the field of unfair labor practices would of course be infinitely multiplied if a similar jurisdiction were extended to state courts as well.

3. In reading the terms, structure, and history of the Act to preclude concurrent state regulation of unfair labor practices, the court below was doing no more than following the construction this Court has given the Act in decisions which have delinested the respective areas for state and federal regulation of the employment relationship. Decisive upon the issue in this case is Plankinton Packing Company v. Wisconsin Emplayment Relations Board, 338 U. S. 953. There the Wisconsin Employment Relations Board entertained proceedings initiated by an employee claiming to have been discharged for nonmembership in a labor organization in violation of the Wisconsin Employment Peace Act. 255 Wis. 285, 38 N. W. 2d 688. Because the employer involved was engaged in a business while affected interstate commerce, and the alleged discharge was not protected by a lawful union-security contract, the complaint, as in this case, also stated an unfair labor practice under the National Labor Relations Act. Nonetheless, the state tribunal heard the case, upheld the complainent's position, and ordered that the discharged employee oe reinstated with back pay. This Court reversed without opinion. 238 U.S. 953.

Thereafter in Amalgamated Association v. Wisconsin Employment Relations Board, 340 U.S. 383, the Court explained the basis of its decision in Plankinton. The Court noted that Section 7 of the National Labor Relations Act guarantees employees the right not to join unions in the circumstances of the Plankinton case, and that in , the unfair labor practice provisions of that Act, "the N. L. R. B. was given jurisdiction to enforce the rights of the employees." Accordingly, "it was clear that the Federal Act had occupied this field to the exclusion of state regulation." The Court added that "Plankinton " " show[s] that states may not regulate in respect to rights guaranteed by Congress in Section 7.17 340 U.S. at 390, n. 12. The manner in which the trial court in the instant case attempted to "regulate in respect to rights guaranteed by Congress in Section 7" is no different from the action of the Wisconsin Board in Plankinton. In both cases the effort was to remedy under state law a violation of rights established in the National Act which were intended to be vindicated through unfair labor practice proceedings before the Board. The effort can no more succeed here than in Plankinton.

The principle that the Act's regulatory provisions are not to be overlapped by the enforcement of state law had been established in the field of representation proceedings before the Plankinton case arose. In Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U. S. 767, and LaCrosce Telephone Corp. v. Wisconsin Employment Relations Board, 336 U. S. 18, both of which were cited by this Court in its Plankinton decision, the authority of the Board to determine representation questions was established as exclusive, even where the standards applied by the states were parallel with those in the Act. The confusion and disruption to national policy that would follow from a contrary view was described in the Bethlehem case as follows (330 U. S. at 175-176):

Thus, if both laws are upheld, two administrative bodies are asserting a discretionary control over the same subject matter, conducting hearings, supervising elections and determining appropriate units for bargaining in the same plant. They might come out with the same determination, or they might come out with conflicting ones as they have in the past. * * But the power to decide a matter can hardly be made dependent on the way it is decided. As said by Mr. Justice Holmes for the Court, "when Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition. Charleston R. Co. v. Varnville Co., 237 U. S. 597, 604. See also Southern Railway Co. v. Railroad Commission of Indiana, 236 U. S. 439, 448; Missouri Pacific R. R. v. Porter, 273 U. S. 341, 345-6. If the two boards attempt to exercise a concurrent jurisdiction to decide the appropriate unit of representation, action by one necessarily denies the discretion of the other. The second to act either must follow the first, which would make its action useless and vain, or depart from it, which would produce a mischievous conflict.

As we have shown (supra, pp. 21-25), these observations are equally applicable to the present case, involving an unfair labor practice. And we believe that the correctness of applying them to unfair labor practice cases has been fully established by the decision of this Court in Plankinton, which cited as the sole supporting authority the Bethickem and LaCrosse cases.

Subsequent decisions of this Court dealing with state regulation of the employment relationship confirm our conclusion. Thus, state regulation has been permitted only where, unlike here, "Congress has not made such " conduct " subject to regulation by the federal Board [and therefore] there is no existing or possible conflict or overlapping between the authority of the Federal and State Boards, because the Federal Board has no authority either to investigate, approve or forbid the union conduct in question." United Automobile Workers v. Wisconsin Employment Relations Board, 336 U. S. 245, 254. Compare Algoma Plywood Co. v. Wisconsin Employment

Relations Board, 336 U. S. 301. On the other hand, where states have sought to regulate the right to strike, which is regulated by the National Act, this Court has sustained the exclusive and paramount authority of the Board to deal with the matter. Amalgamated Association v. Wisconsin Employment Relations Board, 340 U. S. 383; United Automobile Workers v. O'Brien, 339 U.S. 454. "Congress has not been silent on the subject of strikes in interstate commerce. * . Congress occupied this field and closed it to state regulation" (citing inter alia, the Plankinton case. United Automobile Workers v. O'Brien, supra, at 456, 457). Similarly, Congress has not been silent with respect to union coercion of employers to nake membership a condition of employment, and, except to the extent permitted by Section 14 (b) of the Act (see, infra, pp. 41-42, n. 13), has closed this field to state regulation. In short, the conclusion of the court below, that the Act's "provision for a comprehensive remedy [for the union practices charged in this case] precluded any State action by way of a different or additional namedy for the correction of the identical grievance" (R. 236), is decisively supported by the decisions of this Court."

^{&#}x27;In addition to the authority discussed above, many state and federal courts have agreed with the results reached in this case by the Pennsylvania Supreme Court. See, e. g., Capital Service, Inc. v. National Labor Relations Board, 204 F. 2d 848 (C. A. 9); Textile Workers Union v. Arasia Mills Co., 193 F. 2d 529, 533 (C. A. 4); Norris Grain Co. v.

R. The exclusive authority of the Board to regulate unfair labor practices permits of no exception for consumrent state regulation under the galacter of adjudicating private rights.

Conceding (Br. 72) that the states may not assert jurisdiction to remedy violations of the

Vorduas, 232 Minn. 91, 46 N. W. 2d 94; Costaro v. Simons. 302 N. Y. 318, 98 N. E. 2d 454; Ryan v. Simone, 277 App. Div.: 1000, 100 N. Y. Supp. 2d 78, affirmed, 302 N. Y. 742 98 N. E. 2d 707, certiorari denied, 342 B. S. 897; McNish v. American Brass Ca., 139 Conn. 84, 89 A. 2d 566; Robinson Preight Lines v. Townston Vision, 28 LBRM 9468 (Ct. of App., Tann., July 18, 1981) ; Reed Construction Co. v. Building Council 27 LRRM 2161 (Chan Ct Miss Pebruary 2 1950). Similarly, the principle applied by the court below, that the Board has exclusive authority to deal with conduct constituting untair labor practices, has been upheld by the vast majority of state and federal courts in the analogous situation where a private party seeks to enforce the unfair labor practice provisions of the Act in a forum other than the Board. Sec, e. g., Ameron Cotton Mal Co. v. Tactile Work. ers Union, 167 F. 2d 163 (C. A. 4); Schatte v. Theatrical Stage Employees, 182 F. 2d 158, 165-168 (C.A. 9), certiorari denied, 340 U. S. 827; California Association v. Building s and Const. Trades Council, 178 B. 9d 175 (C. A. 9) : Ew parts . Do Silva, 33 Cal. 2d 76, 199 P. 2d 6; Lodge Mfg. Co. v. Gilbert, 32 LRRM 2500 (Tenn Sup. Ct., July 17, 1953). Jacobs v. Clearing Machine Corp., 31 LRRM 2071 (Ohio Ct. App., July 24, 1982); McNutt v. United Gas, Coke & Chemical Workers, 108 F. Supp. 871 (W. D. Ark.); I. L. U. v. Sunst Line & Troine Co., 77 F. Supp. 119 (N. D. Cal.); United Packing House Warkers v. Wilson & Co., 80 F. Supp. 568 (N. D. Ill.); Born v. Ceass. 101 F. Supp. 473 (D. Alaska); Nach Kelvinator Corp. v. Grand Rapids Building Trades Council, 30 LRRM 2488 (W. D. Michigan, July 2, 1952). Contro: Montgomery Building and Construction Trades Council v. Ledbetter Erection Company, 256 Ala. 678, 57 So. 2d 112, 121, writ of certiorari dismissed as improvidently granted, 344 U.S. 178; Kinard Cook, Building Trades Council, 64 So. 2d 400 (Ala.); State ex rel. Tidewater-Shaver Burge Lines v. Dobson, 245 P. 2d 903 (Oregon Sup. Ct.).

public rights conferred by the Act, petitioner nevertheless insists that state courts may enjoin. as violations of state-recognized private rights, the precise conduct which has been prescribed by the Act. The Act, petitioner argues (Br. 73), grants the Board power only "to protect new, public rights and not to adjudicate private rights," the determination of which was left to "the continuing authority of state courts to adjudicate private rights under state law." Accordingly, petitioner concludes that the vesting of power in the Board to enforce the provisions of the Act was intended at most to prevent other public administrative bodies from exerting an infringing jurisdiction, but did not deprive state courts of their traditional function of adjudicating private exuses of action under state law even though they also constituted unfair labor practices. To fortify its position petitioner refers to Section 10 (a) of the Act, by which the Board is "empewered" to prevent persons from engaging in unfair labor practices, and which further provides that while this power is not affected by "any other means of adjustment or prevention." it may nevertheless be ceded, in specified circumstances, to "any agency of any State." According to petitioner, the word "empowered" signifies a discretionary authority "limited " " " to [the] protection of public rights" (Br. 40); the phrase "any other means of adjustment" constitutes a

recognition of the existence "of other remedies" for unfair labor practice activities, such as the one sought by petitioner in this case (Br. 26 ff.); and the provision for cession of the Board's jurisdiction to state "agencies" indicates an intent not "to affect continuing state court jurisdiction under state law" (Br. 41). In this view, cases like Biblichem, LaCrosse and Plankinton (supra, pp. 25-27) are distinguishable; for they involved attempts by state administrative agencies, rather than state courts, to regulate in the field covered by the Act.

This argument, we think, misreads the controlling decisions of this Court and runs squarely counter to the language and intent of Section 10 (a) upon which petitioner attempts to rely.

This Court has found no distinction which is relevant to the problem at hand between the adjudication by state courts of "private rights" and the enforcement of strice statutes by administrative agencies. So, for sample, in United Automobile Workers v. O'Brien, 339 U. S. 454, a state statute, enforceable through sanctions administered in the state courts (339 U. S. at 456), was held to encroach upon the Federal Act's regulation of peaceful strikes. As the Court subsequently elected, "Plankinton [which involved a state administrative agency] and O'Brien [which involved a state court] both show that states may not regulate in respect to rights, guar-

deling Congress in Section (" Analysinaled . 7. Wisconsin Employment Belations 0 B & 882 380 n 12. The decisive THE SE STORY IN THE PROPERTY OF THE PARTY OF THE PARTY. FOR THE PROPERTY OF THE PROPER the action en adjudierting "private tights" of of ministerative kaliks dieding with spidie the interest of the states in private r courts is no greater in this The professional feet in the centile and han pointe vidities. Il Amagematia Livica. were a training and the the office points. ree is comily formalien, whichever form it takes. The critical exist of preclapping and incom-

the entired evils of overlapping and moonstatency with the uniform achieve Congress created are no by present when the state regulates conduct amounting to tederal unfair labor practices in its courts than when the state acts through advantageative agencies. As two bave shown (stopes, pp. 21–24), this very case illustrates the divisations of state action from the pattern of

"See Juffe, The Public Right Bogma, to Harv. L. Rev. 720, 787-788, and 798.

[&]quot;Ut Higher v. Superior Court of California, 220 U. S. 100, 400: "The face that [the state's] policy is expressed by the judicial organ of the State rather than by the legislature we have repeatedly ruled to be immaterial."

STATE OF THE STATE riging the service of the control of that might have been true bustantes in the remate Chycariom of the Plant un orania regale. O de la casa de la c Historiania Militariana and American Allenda adjustication of their cause it stores of heighten tore mare compare whosever this issues assure advantageous! Clearly, the "rest contentals of constituent Charles and Tale More Care A. W. an AND ENGLISHED THE REPORT FROM THE STATE OF THE STATE 26), are the same in either case: And because the integrity of the regulatory procedures eathb

[&]quot;The Board may assert its jurisdiction in unfair labor practice cases only where a party initiates the proceedings by filing a charge. National Labor Relations Board v. Indiana & Michigan Electric Co., 318 U. S. 9, 17.

thinks by Congress is spacepible to subversion by such conflicts regardless of their source, it is clear that Congress left no room for deterioration of the uniformity and specialization of administration it intended under the guise of an adjudication of private rights by state courts.

we can't contrary to persioner, that this is the pictic morning of Testion 20 (a), which is the critical province to have continued framework of the Act establishing the Board as the sole tributal with power to hear and determine unitarities practice conduct. The Section reads as follows:

Sec (i. (a) The Board is empowered; as hereinellar provided, to prevent any pureou front entaging in any unitary labor enterior (fined in election 5) affecting someware. This power shall not be affected by cay other seams of adjustment or prevention that his been or may be established by agreement law, or otherwise: Prevented. That the Plant is empowered by agreement with any agency of any State or Territory to code to such agency jurisdiction: ever any eases in any industry (other than aming, manufacturing, committed than aming, manufacturing, committed than aming manufacturing committed than aming committed the productions and transportation except where productions and transportation except where productions can be stated to the determination of such cases by such agency is inconsistent with

the corresponding provision of this Act or has received a construction inconsistent therewith.

There is nothing in this language, or in the Act as a whole, to sustain petitioner's claim that by use of the word "empowered," giving the Board authority over "bublie" rights, Congress left the states free to regulate the same conduct as a means of enforcing "private" rights. When it appears, as it does here, that litigation of private rights overlaps the Board's authority under Section 10 (a) to hear and decide unfair labor practice cases, the impropriety of such litigation has been established. In empowering the Board to prevent unfair labor practices and thereby vindieste the public rights conferred in the Act. Congress vested the Board with authority both to hear unfair labor practice cases and to provide appropriate remedies, which is precisely the same power the Pennsylvania trial court assumed for itself in this case. But under Section 10 (a), as stated in the report accompanying the House bill (H. Rep. No. 245, 80th Cong., 1st Sess., 5.40):

the power of the Board under the amended act in the matter of unfair labor practices is exclusive. The rule of exclusive jurisdiction was developed many years ago by the Supreme Court in order to provide for uniformity in matters of national policy under the commerce clause. The Labor Act is an illustration of such a policy.

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As we have shown, supra, pp. 14-21, this statement, made with respect to the House version of Section 10 (a), is an accurate description of Section 10 (a) as enacted.

Further support for the decision below is found in the language of Section 10 (a), mistakenly invoked by petitioner (Br. 26 et seq.), which secures the Board's jurisdiction against impairment "by any other means of adjustment or prevention Far from recognizing a concurrent authority in state courts which would subvert the administrative framework of the Act, Congress, by this language, simply adopted the existing wording of the original Act, which emphasized that the provisions of the Act were "paramount over other laws that might touch upon similar subject matters." S. Rep. No. 573, 74th Cong., 1st Sess., p. 15. See also S. Comm. Print, Comparison of S. 2926 (73d Cong.) and S. 1958 (74th Cong.), reprinted in Vol. 1 of Legislative History of National Labor Relations Act, 1935, p. 1319, at 1323, 1357 (Gov't. Pr. Off. 1949).

The parages from the House Conference Report upon which petitioner relies in this connection are of no help to the petitioner. The report stated, as petitioner's quotation shows (Br. 26-27), that "when two remedies exist, one before the Board and one before the Courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies." But petitioner omits the earlier language in the same

paragraph which indicates that the situations described are those provided for in other sections of the Act and have no reference to the existence of state court remedies for unfair labor practice conduct. See p. 19, n. 5, supra. Moreover, the final two sentences of the quotation appearing in petitioner's brief, referring to "the availability to private persons of any other remedies," are not even contained in the paragraph of the report dealing with Section 10 (a). These sentences are found rather in the part of the report dealing with the separate procedural provisions of Section 10 (1) empowering the Board, pending its own proceedings, to seek injunctive relief in an appropriate federal district court against the unfair labor practices defined in Section 8 (b) (4). In this context the reference to other remedies for private persons plainly relates to the private suits for damages specifically provided for by Section 303 of the Labor Management Relations Act for the same conduct as that proscribed by Section 8·(b) (4).

Equally unavailing to petitioner are the references it makes to passages in the legislative debates which speak of instances where the Act "may be duplicating the remedy existing under State law" (Br. 29, quoting Senator Taft in 93 Cong. Rec. 4437, and Br. 28-29, 31-32, 34). For, as is made perfectly clear by the contexts from which petitioner has abstracted these truncated quotations (see 93 Cong. Rec. 4024-4025, 4432-

4433, 4436-4437), they refer merely to the applicability of Section 8 (b) (1) (A) to situations where there is physical violence. Congress as this legislative history demonstrates, purposely reserved to local authorities the right to deal with violence, whether it occurs on a picket line or entirely outside the field of labor relations. See National Labor Relations Board v. International Rice Milling Co., 341 U. S. 665, 672; Cox and Seidman, Federalism and Labor Relations, 64 Harv. L. Rev. 211, 236. The question presented in this case is, of course, wholly different.

We note, finally, petitioner's effort (Br. 59-60) to build an argument upon the provision in Section 10 (a) which empowers the Board to make an agreement with a state "agency" ceding jurisdiction to the latter "unless the provision of the State " " statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith." The suggestion is that the jurisdiction of which cession is permitted was by this provision somehow "distinguished from the jurisdiction of state courts where there was no thought of any

Senator Taft stated during the colloquy with Senator Morse from which petitioned has partially quoted, "[Section 8 (b) (1) (A)] will duplicate some of the State laws only to the extent, as I see it, that actual violence is involved in the threat of in the operation." 93 Cong. Rec. 4437. [Emphasis supplied.]

cession in connection with their then unquestioned continuing jurisdiction under state law" (Pet. Br. 59-60). But the absence of a provision for ceding jurisdiction specifically to state courts can hardly be the basis for an inference that state courts have such jurisdiction without cession. On the contrary, the very location of the proviso allowing cession as an addendum to the Board's powers bolsters the conclusion that except for the provise and in conformity with it, no other tribunal may operate in the field occupied by the Board. That this is so with respect to conduct which, as here, violates both local law and the National Act, is reflected by this Court's observation in Algoma Plywood Co. v. Wisconsin Employment Relations Board, 336 U. S. 301, 313, that a cession of jurisdiction was necessary to permit state action "where State and toderal laws have parallel provisions."

Significantly, the terms under which cession may take place emphasize the concern of Congress with maintaining uniformity in administration. Cession to a state agency is conditioned, not only upon substantial identity in the provisions of the parallel statute, but also upon substantial continuing identity in their interpretation. But if, as in this case, a state court undertakes to redress unfair-labor-practice conduct as violative of state law, there can be no assurance that the uniformity of administration in this field upon which Section 10 (a) insists will be maintained.

We submit, in short, that far from supporting petitioner's position, the proviso is a cession of jurisdiction points, as do all other persinent materials, to the conclusion that the Supreme Court of Pennsylvania was right. The paramount authority of the Board to consider and remedy the violation of Section 8 (b) (2) alleged by petitioner precludes injunctive relief in the state court, under state law, directed against the same conduct."

"The decision below is not affected by Section 14 (b) of the Act, which provides that nothing in the Act "shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." The section is not invoked by petitioner, and we mention it here solely to complete our canvass of matters which might conceivably be invoked on petitioner's behalf. The evident reason for the irrelevance of Section 14 (b) is that it permits the operation of state regulatory authority only with respect to union-security agreements, and no such agreement is involved here. Without such an agreement, the requirement of union membership as a condition of employment is, of course, prohibited by the National Act, and there is no need for invocation of state pro-hibitory laws. Accordingly, this case presents no occasion in any event for the operation of Section 14 (b), for that provision was intended simply to leave the States "free to pursue their own more restrictive policies in the matter of union-security agreements" and thereby to regulate a matter "not governed by the federal law " " " Algoma Plywood Co. v. Wisconsin Employment Relations Board, 336 U. S. 301, 314. [Emphasis supplied.] The legislative history of Section 14 (b) confirms the conclusion that it was intended to permit state restrictions on union-security arrangements only where made in excess of the federal limita-

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment below should be affirmed.

ROBERT L. STERN,

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Associate General Counsel,
DOMINICK L. MANOLI,
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Attorney, National Labor Relations Board.

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tion. Sec, H. Rep. 245, 80th Cong., 1st Sess., p. 34; H. Conf. Rep. 510, 80th Cong., 1st Sess., p. 60; 93, Cong. Rec. 6445, 6519-6520.

We do not understand the footnote reference to Section 14 (b) in Plumbers Union v. Graham, 345 U. S. 192, 194, n. 1, to suggest a different rule. Nothing in that case indicates that the state court could have enjoined the picketing there involved had it also constituted an unfair labor practice subject to the Board's jurisdiction. No claim was made in that case that the business involved affected interstate commerce so as to subject it to the Board's jurisdiction. Nor was it urged, or, apparently, considered by this Court, that the state action might have infringed the Board's exclusive jurisdiction to deal with unfair labor practices proscribed by the Act in the event that the business involved there was within the coverage of the Federal Act.

APPENDIX

The relevant provisions of the original National Labor Relations Act (49 Stat. 449, 29 U. S. C. Sees. 151, et seq.), and of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. V, Secs. 141, et seq.), are as follows:

Key to Comparison

Portions of the National Labor Relations Act which have been eliminated by the Labor Management Relations Act are enclosed in black brackets; provisions which have been added to the National Labor Relations Act are in italies; and unchanged portions of the National Labor Relations Act are shown in roman.

NATIONAL LABOR RELATIONS ACT

FINDINGS AND POLICIPA

SECTION 1. * * *

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choos-

ing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) [There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall Le appointed for terms of five years each, except] The National Labor Relations Board (hereinafter called the "Board") created by this Act prior to its amendment by the Labor Management Rolations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of Are instead of three members, appointed by the President, by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years, and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy chall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by lax.

UNPAR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to him or tenure of employment of encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in [the National Industrial Recovery Act (U.S.C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder,] any other statute of the United States, shall preclude an employer

from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership Berein on or after the thir eth day following the beginning of such imployment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collectivebargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the emplayee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(b) It shall be an unfair labor practice for a labor organization or its agents—

⁽²⁾ to cause or attempt to cause an employer to discriminate against an employee in violation

- of subsection (a) (3) or to discriminate against on employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;
- (4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of attion 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organisation as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor

class rather than to employees in another labor organization or in another trads, craft, or class, unless such employer is jailing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognise under this Act;

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power [shall be exclusive, and] shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, [code,] w, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over the cases in any industry (other than mining, manufacturing, communications, transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith. (b) Whenever it is charged that any person has

engaged it or is engaging in any such unfair labor produce the Books, or any agent or agency design nated by the Board for such purposes, shall have power to issue and cause to be served upon auch person a complaint stating the charges in that respect, and containing a netice of hearing before the Board or a member thereof, on before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor proctice agest. ring more than six months prior to the filing of the charge with the Board and the service of a dopy thereof upon the person against whom such charge is made, unless the person liggrieved thereby was prevented from thing such charge by reason of service in the armed forces, in which event the nix-month period shall be computed from the day of his discharge. Any such somplaints may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person to complained of aball have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testamony at the place and time fixed in the compatitive. In the discretion of the member, agent, or a rency conducting the hearing or the Board, any when person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts;

of law or equity shall set be exactablished as a cost of many shall set be exactable to the cost of th

sin, their testing any for took introduced. If they is the faction of the faction ene auch entire ti be spreet an roch partin au cho expendes inch parton to sense and desire con mest union cabor procine and to take such Africative action studenting administration of our provide while or without but the period with a fine or and the period of this week. I have been a fine or and the period of the labor organization—it his case may be, recover-ble for the discrementation suffered by him. And provided further. That in allermining whether s complaint shall issue alloging a violation of section 8 (a) (1) or section ? (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affliated

vith a labor organisation national or interva-const in scope. Such order may further require such a personal to tracke responds from State to Time howing the extent to which it has complied with the order. If upon [811] the prepondernace of the testimony teltem the Board shall not be of the opinion that the [96] person named in the sumplaint his engaged in or is engaging in any such antair labor paratice, then the Board shall state the Bodings of fact Old shall bases on order discussing the earlier of the Board shall caquire the returnment of any individual as an engaged size has been marped or discharged or discharged, or the payment to him of any deak pay, if such individual was suspended er discharged for cause. In oos, the evidence is presented hefore a mamber of the Board, or beforc an examiner on examiners thereof, such ntember; primal examiner or examiner, as the care may be, shall sense and cause to be resued on the parties to the proceeding a proposed report. together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after termine thereof upon each parties, or within such further period as the Borrd may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed. -

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals [of] for the District of Columbia), or if all the circuit courts of appeals to which application

the United States (including the [Supreme] District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board.

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals [of] for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside.

⁽j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is

alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it doesne just and proper.

(1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (B) of section B (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the fling of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: Provided further, That no temporary restraining order shall be issued without notice

mless a petition alleges that substantial and irreparable injury to the charging party will be speidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: Provided further, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting of protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

LIMITATIONS

SEC. 14 (b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.